

SUPERIOR COURT OF CALIFORNIA COUNTY OF MERCED

LOCAL RULES

EFFECTIVE JANUARY 1, 2010

John D. Kirihara, Presiding Judge Brian L. McCabe, Asst. Presiding Judge Carol Ash, Judge Hugh M. Flanagan, Judge Marc A. Garcia, Judge Ronald W. Hansen, Judge David W. Moranda, Judge Donald J. Proietti, Judge

> Ralph J. Cook, Commissioner Gerald W. Corman, Commissioner Harry L. Jacobs, Commissioner

Kathleen Goetsch, Court Executive Officer

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RULE 1: COURT ORGANIZATION

a. Adoption and Amendment of Rules

These rules shall be known and cited as "Local Rules for the Superior Court of California, County of Merced." These rules shall become effective as of <u>January 1, 2010</u>, and on that date all other rules previously adopted by this Court and the Municipal Court are repealed, provided that no action heretofore taken in compliance with such rules shall be made invalid or ineffective by such repeal. (*Effective January 1, 2010*).

b. Presiding Judge

The business of the Court shall be directed by one of the Judges, designated as the Presiding Judge, who shall act in such capacity for a term of two calendar years. The Judges of this Court shall meet during the month of September of every other year, commencing with September 2004, and by a majority secret vote select the Presiding Judge and Assistant Presiding Judge for the succeeding two-year term commencing January 1st. The Assistant Presiding Judge shall be assigned such duties as the Presiding Judge deems necessary and shall act as Presiding Judge during the elected Presiding Judge's absence. In the event a Presiding Judge leaves office before the end of his or her term, the Assistant Presiding Judge shall assume the position of Presiding Judge and a new Assistant Presiding Judge shall be elected. Each shall serve in such capacity until the next regularly scheduled election.

The Presiding Judge shall have those powers and duties conferred on the Presiding Judge as provided by statute, California Rules of Court, and rules as adopted by the superior court.

The Presiding Judge's duties shall include, but are not necessarily limited to, the following:

- -Presiding over regular and special courts meetings.
- -Presiding over executive committee meetings.
- -Setting and implementing Policies and Procedures.
- -Planning for the courts future needs.
- -Supervising the Executive Officer.
- -Conducting the day to day affairs of the court.

c. Executive Committee

There is hereby established an executive committee. The committee shall be comprised of at least three (3) Judges, one of whom must be the Presiding Judge, and one of whom must be an Assistant Presiding Judge. The remaining Judge members shall be appointed by the Presiding Judge. The Court Executive Officer shall be a non voting member and shall serve as secretary of the executive committee.

The term of office of executive committee members shall be two (2) years, coinciding with the term of the Presiding Judge.

The executive committee shall hold regular meetings at least twice every month. Any Merced Superior Court Judge may attend any meeting of the committee. Notice of the time and place of the meeting shall be provided to all Judges at least 24 hours before the meeting. Meetings of the executive committee will be chaired by the Presiding Judge.

The duties of the executive committee shall include:

- (1). Recommending policy and procedures for implementation by the Presiding Judge;
- (2). Reviewing, in its discretion, the decisions and actions of the Presiding

 Judge and Executive Officer and, where appropriate, making

 recommendations to the Presiding Judge;
- (3). Establishing budgetary priorities and making recommendations for Judges meetings thereon;
- (4). Recommending for hire an Executive Officer and Assistant Executive Officer;
- (5). Conducting an annual evaluation of the performance of the Executive Officer;
- (6). Interviewing and recommending for employment Court Commissioners.

d. Meeting of the Judges

There shall be a meeting of the Judges held on the first Friday of each month to conduct such business as may properly come before them. If the first Friday falls on a holiday, then the following Friday is the meeting day. Additional meetings may be called by the Presiding Judge or by a majority of the Judges.

Each Judge shall have one vote at the Judges' meetings. Any judge that does not attend a regular or special meeting (except a meeting to select the Presiding Judge) may authorize another Merced Superior Court Judge to exercise a written proxy, general or specific as stated in the proxy, and vote on his or her behalf.

e. Hours of Judicial Business

- (1) The Court will be open for judicial business from 8:00 a.m. until 5:00 p.m. on all court days.
- (2) All clerk's offices of the court will be open for business 8:00 a.m. to 4:00 p.m. on all court days. The clerk shall not allow the public to enter the offices for the purposes of filing papers or obtaining other official services after this 4:00 p.m. closing time except as directed by a judge of the court.

f. Scheduling of Trials and Hearings

(1) A list of the times and days of the Court's various calendars, for both civil and criminal matters, and including the hearing of ex-parte matters can be accessed at (209) 725-4100 or at www.mercedcourt.org. The parties are required to check for the availability of a calendar before requesting that any matter be set; special settings will occur only in the most extraordinary circumstances.

g. Standing Orders

The business of this court shall be supervised by the Presiding Judge. The Presiding Judge shall also prepare and publish, with the concurrence of a majority of the judges of this court, such routine rules, orders, or regulations, to be known as "Standing Orders," as may be required to expedite and facilitate the business of this court.

(*Effective July 1, 2004*).

RULE 1.2: COURT SECURITY

Security in the courtrooms shall be maintained by the Sheriff of the County of Merced, unless otherwise ordered by the Presiding Judge.

(Effective July 1, 2004).

RULE 1.3: COURT ATTIRE

No person shall appear in court without a shirt, or barefoot, or wearing a tank top. Bailiffs of the court are to remove any person violating this rule. This rule does not limit any judge from prescribing appropriate attire in the courtroom.

(*Effective July 1, 2004*).

RULE 1.4: CUSTODY OF COURT FILES AND SIGNED ORDERS

No exhibit or evidence on file with the clerk in any civil or criminal case shall be taken from the clerk's office or courtroom.

Orders signed by a judge must be filed immediately in the clerk's office. An unfiled, signed order shall not be taken from the courthouse.

(*Effective July 1, 2004*).

RULE 1.5: DEFINITIONS

a. Clerk

The word "Clerk" means the clerk of the court or any deputy clerk.

b. Judicial Officer

The words "Judicial Officer" mean any duly appointed or elected judge of the court, any duly appointed commissioner, any judge or retired judge assigned by the Chairperson of the Judicial Council to serve as a judge of the court, and any attorney appointed by the Presiding Judge to serve as a temporary judge, while so serving.

(*Effective July 1, 2004*).

RULE 1.6: <u>ELECTRONIC EXHIBITS</u>

The Court will not provide technical assistance at a Court Trial or Jury Trial to any party presenting electronic evidence or exhibits. Electronic exhibits include VHS videotape, DVD, power point presentations, audio tapes, and digital photographs.

Exhibits presented shall conform to the following standards:

- (1). Exhibits presented as evidence shall contain only the information and images to be viewed by the Court or Jury. The Court will not supply an employee to stop and/or rewind the DVD to protect the interest of any party.
- (2). <u>Power Point Presentations must be submitted in electronic and printed</u>

 <u>format.</u> (*Effective January 1, 2009*) (*Repealed Effective January 1, 2010*) See Rule 16

 n.)

RULE 1.8: EX PARTE MATTERS

All ex parte applications which require notice will be noticed in the Civil Law and Motion Courtroom for a ruling. Hearings shall be scheduled only as authorized by the clerk's office. Copies of all papers to be presented at the hearing shall be filed with the court no later than 12:00 noon the day before the scheduled hearing time.

- a. The Civil Law and Motion Judge shall be available for the signing of ex parte orders or shall designate a judge or judges who will be available for such signing.
- **b.** It is the policy of the courts that, unless ordered otherwise by the Presiding Judge, attorneys shall not seek to have ex parte orders signed by judges other than set forth in **a.** above.
- c. Requests for ex parte orders shall be based solely on the moving papers without oral argument or comment by counsel, but the judge may, in his or her own discretion, exempt matters from this provision.

d. Notice shall be in accordance with California Rule of Court 3.1203, and all paperwork shall be submitted no later than 12:00 noon the day before the scheduled hearing.

(Effective July 1, 2004)

RULE 2: FILING PROCEDURES

a. Time of Filing Papers

All documents and other papers shall be filed during the hours set forth in Rule (2) above. All papers necessary to hearing in default cases (including default dissolutions), return of service on orders to show cause (except wherein the Court has by order shortened the time of service), probate matters, adoptions, compromise claims of minors, including proof of notice, posting affidavits of publication, agreements in dissolution actions, etc., shall be filed by 4:00 p.m. on the third court day preceding the date set for hearing.

Example: If a matter is set for hearing on a Monday morning, the documents pertaining to said hearing shall be filed with the Clerk of the Superior Court by 4:00 p.m. on the Wednesday preceding that Monday. Saturdays, Sundays, and holidays are not considered court days.

The Clerk shall process court filings on a priority basis, insuring that all documents are properly entered and filed in the appropriate file. The Clerk shall further give processing priority to documents with imminent trial or hearing dates, insuring that documents reach the court file prior to delivery of the file to Court for hearing, or as soon thereafter as is reasonably possible in consideration of the date of receipt.

b. Compliance with California Rules of Court 3.110

All documents presented for filing shall comply with the provisions of Rule 3.110 of the California Rules of Court.

c. Completion of File in Default and Uncontested Matters

No hearing will be set in a default or uncontested matter until all requisite pleadings and documents have been filed and the Clerk has entered the default, unless it is a matter requiring Court entry of default, in which case the return of service must be filed before the request for hearing.

d. Filing of Orders

All written orders shall be filed in the office of the Clerk immediately after they are signed.

e. Forma Pauperis Procedure

All parties should refer to California Rules of Court, Rules 350-3.63.

f. Courtesy Copies

(1) Except as to cases designated as "complex," one courtesy copy of all papers filed in relation to any motion to be heard on the Law and Motion Calendar must be provided on the same day the papers are filed, including opposition and reply papers. The clerk shall endorse such courtesy copies as filed, and shall forward them to the Law and Motion department. If the motion attacks a pleading already on file, a courtesy copy of that pleading must also be provided.

g. FAX Filing and Service

Parties may file pleadings by FAX through Official Payments Corp. (800-322-4945) pursuant to California Rules of Court, Rules 2.300-2.303 et. seq..

- (1) All FAX filings shall be accompanied by the Judicial Council Facsimile Filing Cover Sheet as the first page transferred, followed by any special handling instructions. Neither the cover sheet nor handling instructions will be filed in the case. The court is not required to keep a copy of the cover sheet.
 - (2) RESERVED
 - (3) RESERVED
 - (4) RESERVED
 - (5) All FAX filings are to be received no later than 4:00 p.m. in order to be filed stamped with that day's date. Otherwise, they will be file stamped the next court day.
 - (6) *RESERVED*

(Effective July 1, 2004).

RULE 3: CIVIL LAW AND MOTION GENERALLY

a. Failure to Appear

Any party may waive their right to appear at any Law and Motion hearing by providing the court and all counsel with written notice of their intent not to appear and to waive oral argument. If the party has filed documents in support or in opposition to a law and motion, the court will consider the non-appearing parties position based upon the documents filed. A written notice of intent not to appear shall be deemed a waiver of oral argument. One party's notice of intent not to appear shall not impair any other parties right to appear and argue their respective position.

Unless the moving party has given written notice of intent not to appear, failure of moving party or counsel to appear at the time set in the department to which the matter is assigned, unless excused by the Judge, shall be deemed cause:

- (1) For placing such matter off calendar,
- (2) For proceeding to hear the matter in the absence of party or counsel.

b. Papers on File

Pursuant to Rule, 3.20, California Rules of Court, all local court rules relating to pleadings, demurrers, ex parte applications, motions, discovery, provisional remedies and form and format of papers are preempted by the California Rules of Court.

c. Failure to Comply with Rules

Failure to file a memorandum of points and authorities by the filing deadline or to comply with Rule 3.1113, California Rules of Court, is a waiver of the memorandum; and in the case of the moving party, the failure to timely file may be considered an admission that the motion is without merit.

d. Tagging Attachments and Exhibits

All attachments and exhibits shall comply with California Rules of Court, Rules 3.1110_and Rule 3.1113.

Each attachment and exhibit to any document, including but not limited to the motion, notice of motion, declaration and memorandum of points and authorities, shall bear a tag setting forth the letter/number designation given it in the document.

e. Evidence at Hearings

Without court permission in writing, oral testimony is not allowed. If counsel believes a particular case justifies oral testimony, the statement required by California Rules of Court, Rule 3.1306 must include an explanation as to why the evidence cannot be presented by declaration or affidavit.

(Effective July 1, 2004).

RULE 3.1: SUMMARY JUDGMENT AND SUMMARY ADJUDICATION

Pursuant to Rule 3.20, California Rules of Court, all local court rules relating to Summary Judgment motions are preempted by Rules 3.1350-3.1354 of the California Rules of Court.

(Effective July 1, 2004).

RULE 3.2: TENTATIVE RULINGS

The Court adopts the tentative ruling procedure set forth in CRC 3.1308(b) until further change. (*Effective July 1, 2004*).

RULE 4: CASE MANAGEMENT

a. General

(1) In accordance with and as required by Rule 3.720, California Rules of Court, the Court has adopted the following procedures to evaluate each case and assign each case to a case-management plan. The court will use the factors listed in California Rules of Court, Rule 3.715, in evaluating cases and selecting a case-management plan. Additional information is provided on the Court's website at www.mercedcourt.org

- (2) All parties or their counsel of record must file and serve a Case Management Statement using the mandatory Case Management Statement Form (CM-110). Such statement must be filed no later than 15 calendar days before the date set for the case management conference or review.
- (3) All applicable items must be completed on Form CM-110. Any answer for which there is not sufficient space on the forms shall be completed on an attached sheet. In lieu of each party filing a separate Case Management Statement, any two or more parties may file a joint statement. Unless the court orders another time period, all parties must meet and confer in person or by telephone no later than 30 calendar days before the date set for the management conference to consider each of the subjects listed in California Rules of Court, Rules 3.727 and 3.724.
- (4) This Rule applies to all: "general civil cases" as defined in California Rules of Court, Rule 3.712. It applies to cases designated as uninsured motorist cases and to coordinated cases only as specified in Rules 3.712(b) and (c).

b. Case Management Conference and Order

- (1). Upon the filing of any complaint or other initial pleading in any case included with this Rule 4, the clerk will provide the filing party with a "Notice of Inclusion in Delay Reduction Program/Notice of Case Management Conference." Said Notice must be served along with the complaint or other initial pleading. A copy of the Notice will be placed in the court file.
 - (a). The case management conference will be held no later than 180 days after the filing of the initial pleading before a court official designated by the Presiding Judge. Unless notified by the Court that no appearance is necessary, all parties or their attorneys must be present at the conference or appear by telephonic conference call, and must be prepared to discuss all elements of the case inquired into on the Case

Management Form and the subjects listed in California Rule of Court, Rule 3.727.

(b). At the Case Management Conference, the Court will enter a Case Management Order setting a schedule for subsequent proceedings, and otherwise providing for management of the case as specified in California Rules of Court, Rule 3.728.

c. Assignment to One Judge for all or Limited Purposes; Complex Cases

- (1) In order to promote the efficient administration of justice, the presiding judge may on the court's own motion or on the noticed motion of a party, order the assignment of any case to one judge for all or limited purposes.
- (2) A civil case which has been identified as complex, under California Rules of Court, Rule 3.400, shall be assigned to one judge for all purposes.

d. Telephone Appearances

Appearances by telephone are permitted and encouraged under the circumstances and procedures listed in California Rules of Court, Rule 3.670. The telephone number to which calls can be made will be posted on the court's website and in the Notice of Inclusion in Delay Reduction Program/Notice of Case Management Conference. (Effective July 1, 2004).

RULE 5: RESERVED

RULE 6: SETTLEMENT CONFERENCES

a. Requirement of Settlement Conferences

A settlement conference is required in all civil trial matters. The time, date and place of the mandatory settlement conference will be set at the Case Management Conference and included in the Case Management Conference Order. At the request of

any party or on the court's own motion, the court may set a settlement conference in addition to the mandatory conference

b. Persons Attending

Trial counsel, parties, and persons with full authority to settle the case must personally attend the conference, unless excused by the Court for good cause shown. If any consent to settle is required for any reason, the party with that authority must be personally present at the conference. The Court may impose sanctions in the event of an unexcused absence of principal or insurer.

Experience has demonstrated the importance and necessity of the presence of all persons whose consent will be required for binding settlement agreement. Therefore, only extraordinary circumstances will excuse the non-appearance at the conference of the principals and authorized representative of the insurer.

c. Each Party to be Prepared

At the conference each plaintiff or party seeking affirmative relief or recovery shall be prepared to make his or her minimum request, and each defendant shall be prepared to make his or her highest offer.

In each case counsel who attend the conference shall be thoroughly familiar with the case and shall be prepared to discuss it.

d. Settlement Statement

It is mandatory that all parties or counsel shall, at least five (5) court days prior to the scheduled hearing, file with the Clerk of the Superior Court and serve on each party, a mandatory settlement conference statement containing the following:

(1) The names of all parties, including intervenors and their representatives;

- (2) A detailed discussion of all facts and law pertinent to the issues of liability and damages involved in the case;
- (3) A good faith settlement demand and an itemization of economic and non-economic damages by each plaintiff;
- (4) A good faith offer of settlement by each defendant.

e. Participation in Good Faith

For a meaningful conference, all attorneys and/or the parties must agree to participate in good faith. Any failure of an attorney to prepare for, appear at, and participate in a settlement conference, unless good cause is shown for any such failure, may be considered as an unlawful interference with the proceedings of the Court.

f. Failure to Appear

If at the time of the scheduled settlement conference, plaintiff or those parties seeking affirmative relief fail to appear, the Court may order the trial date vacated and/or impose monetary sanctions. Written notice thereof will be mailed to all parties or their counsel of record as ordered by the Court. If the defendant or other responsible party fails to appear at the settlement conference and good cause is not shown, the Court may impose sanctions by way of costs, actual expenses, and counsel fees and order the case to proceed to trial on the date assigned.

g. Failure of Settlement Conference

In the event settlement negotiations are not successful, counsel should expect and be prepared to proceed to trial on the date scheduled. Every effort will be made by the Court to insure that the case goes to trial on the date scheduled.

h. Notice of Settlement or Dismissal

If a case is settled or otherwise disposed of, the plaintiff must immediately file written notice of the settlement or other disposition with the court and serve the notice on any arbitrator or other court-connected ADR neutral involved in the case. If a hearing, conference or trial is imminent oral notice must be given to all of the above. The Court will impose sanctions for failure to provide it with timely notice of settlement.

A request for dismissal must be filed by Plaintiff within 45 days after the date of settlement unless the settlement agreement conditions dismissal on the satisfactory completion of terms that are not to be performed within 45 days of the settlement. If the settlement contains such terms, then the settlement must specify the date by which the dismissal is to be filed.

If plaintiff does not file a request for dismissal within 45 days after settlement or 45 days after the date set for dismissal, the court will either: 1) dismiss the case; or 2) Require Plaintiff or Plaintiff's counsel to appear and show cause why sanctions should not be ordered for failure to file the required request for dismissal.

(*Effective July 1, 2004*).

RULE 7: NOTICE OF STAY

Any party who requests a stay must immediately file a notice of the stay and attach a copy of the order or document showing that the proceedings are stayed. If the person who requests the stay has not appeared or is not subject to the jurisdiction of the court, the plaintiff must immediately file a notice of the stay and attach a copy of the order or other document showing the proceedings are stayed. This section applies to cases stayed for the following reasons:

(a). Order of a Federal Court or higher State Court;

- (b). Contractual arbitration under section 1281.4 of the Code of Civil Procedure;
- (c). Arbitration of attorney fees and costs under section 6201 of the Business and Professions Code; or
- (d). Automatic stay caused by a filing in another court.

(*Effective July 1, 2004*).

RULE 8: PRE-TRIAL CONFERENCES

a. Pre-Trial Settings

Except in cases assigned to one judge for all purposes, pre-trial conferences WILL NOT be set unless a party, at the Case Management Conference, files a declaration setting forth facts indicating that a pre-trial conference is justified and the designated court official so finds and orders.

b. Pre-Trial Conference Procedure

- (1). The parties shall confer before the date assigned for a pretrial conference to reach agreement upon as many matters as possible and shall prepare jointly, or each shall prepare, and submit before the conference, a written statement of the matters agreed upon.
- (2). The parties shall be prepared to respond to any inquiry by the designated court official as to the possibility of a settlement of the case.

(Effective July 1, 2004).

RULE 8.1: PREPARATION OF ORDER AFTER HEARING

Unless the court orders otherwise or prepares the order after hearing on its own, the prevailing parties shall prepare a written order following any hearing on the Law and Motion calendar.

If the prevailing party does not prepare an order after hearing within 10 days of the hearing and does not communicate the reason for the delay to the other party, then the other party may prepare the order and process it.

(*Effective July 1, 2004*).

RULE 9: JURY TRIALS (Civil)

a. Deposit, Forfeiture & Return of Jury Fees

The deposit of advance jury fees, and of daily fees and mileage, shall be made as required by California Code of Civil Procedure section 631. The clerk shall not accept a deposit sought to be made fewer than 25 days before the date set for trial (5 days in unlawful detainer cases). If a balance of monies remains after trial or disposition, that amount shall be returned to the depositing party. If the monies on deposit are not sufficient to cover the daily costs of trial jurors, the Court shall notify the depositing party that there is a balance due and owing, and the party shall deposit that amount forthwith with the Court.

b. Failure to Post

Failure to deposit advance or daily fees as required will be deemed a waiver of trial by jury and the Court, in its discretion, may proceed to trial without a jury, dismiss an empanelled jury, or upon such terms as may be just, proceed with a jury.

c. Payment for Food, Lodging and Other Expenses

In a civil action in which a jury has been sworn, the expenses for food, lodging and other reasonable necessities which are incurred shall be borne by the depositing parties. Before any such expenses are incurred, the Court Clerk at the trial shall require the depositing parties to advance such sums of money as the Court deems reasonably necessary in order to pay for the anticipated expenses, but in no event less than \$125.00 per panel meal. The money so advanced shall be deposited with the daily jury fees on the last day of the trial prior to the deliberation by the jury. Any surplus amount of money remaining after said expenses have been paid in full shall be returned to the payor. If a depositing party fails, upon the request of the Court, to advance such necessary expense money, the Court, will forthwith consider whether to dismiss the jury and proceed as if no jury had been selected and sworn.

d. No Jury Trials Scheduled for Certain Holiday Weeks

No jury trials will be scheduled for the week in which the Thanksgiving holiday falls. In any year in which the Christmas holiday falls on a Tuesday, Wednesday, or Thursday, no jury trials will be scheduled for that week.

e. In Limine Motions

- (1). The following motions <u>In Limine</u> are deemed <u>granted</u>. Written motions should not be submitted on these issues:
 - (a). Motion excluding evidence of collateral source;
 - (b). Motion excluding evidence of, or mention of, insurance coverage;
 - (c). (RESERVED).

- (d). Motion excluding offers to settle and/or settlement discussions.
- (2). All other motions in limine shall be filed and served on opposing counsel no later than 4:00 p.m., six (6) court days prior to the trial call date. Written opposition to in limine motions, if any, shall be filed and served on opposing counsel no later than 4:00 p.m., three (3) court days prior to the initial trial call date. Failure to submit written opposition to in limine motions will not preclude oral opposition to the motions at the time of trial.

(3). (RESERVED).

(4). Motions in limine shall be prepared in the form prescribed as follows: The title of each in limine motion shall identify the moving party and describe the nature of the motion, and shall be numbered sequentially, indicating the total number of in limine motions submitted by the moving party. Example: "Plaintiff JANE DOE'S Motion In Limine to Exclude the Testimony of Joe Expert [No. 1 of 6]." Written opposition to in limine motions, if any, shall identify both the party filing the opposition, and the specific motion which is being opposed by name of moving party and motion number. Example: "Defendant RICHARD ROE'S Opposition to Plaintiff JANE DOE'S Motion In Limine No. 1." (Effective July 1, 2004).

RULE 10: JURY INSTRUCTIONS (Civil)

a. Use of Pre-Approved Instructions

To the extent possible parties must use instructions promulgated or sponsored by the California Judicial Council.

b. Service of Jury Instructions

At the commencement of trial in all civil jury matters, counsel shall serve upon all other parties participating in the trial and deliver to the trial judge a written request captioned in the action and entitled "Instructions Requested by (name of party)," to which shall be attached an edited copy of all instructions requested, with one instruction per page and a five-inch margin at the top of the page which may, however, include typical CACI headings, which will not be read to the jury. The parties may submit additional typewritten or printed instructions which shall contain the authorities relied upon, shall be sequentially numbered and shall follow standard CACI format. The parties should be prepared to provide to all jurors and alternates a copy of all written instructions, if so required by the trial judge.

(*Effective July 1, 2004*).

RULE 11-12: RESERVED

RULE 13: TOXIC AND HAZARDOUS MATERIALS

Prior to bringing any toxic hazardous or potentially hazardous materials into the courtroom, counsel shall provide to the court a written statement containing information as hereinafter set forth:

- (1) A list of the technical and street names of the said materials.
- (2) The types and sizes of the containers to be utilized for the materials.
- (3) The name of the person who will transport the materials into the courtroom.
- (4) Where the materials will be stored and the conditions, under which the materials will be stored, viewed or handled.
- (5) The name of the person who will remove the materials.
- (6) An explanation as to why the material is hazardous or potentially hazardous and the remedies to be followed in the event of a spill, leak or other accident.

(7) An explanation as to why the introduction of the materials into evidence must be accomplished by their physical presence in the courtroom, rather than proof of their existence by any other method.

Toxic, hazardous or potentially hazardous materials shall include, but not be limited to, all chemicals, pesticides, and explosives, other than ammunition. A comprehensive list of these materials is contained in the California Code of Regulations, Title 8, Section 339(3), entitled The Hazardous Substance List. Any further information concerning the list of materials provided in the aforementioned California Code of Regulations or additional information concerning other hazardous materials may be obtained by contacting the Merced County Department of Environmental Health.

This rule is made for the protection of the public and all persons involved in the processes of the justice system of Merced County.

(Effective July 1, 2004).

RULE 14: DOMESTIC VIOLENCE PROTOCOL

This rule is adopted in conformity with Penal Code 136.2 and California Rule of Court 5.450.

A. **DEFINITIONS**

For purposes of this rule:

- (1). "Criminal court protective order" means any court order issued under California Penal Code § 136.2 arising from a complaint, information, or an indictment charging a crime of domestic violence as defined in California Penal Code § 13700.
- (2). "Court" means all divisions of the Superior Court of the County of Merced.

- (3). "Cases involving child custody and visitation" include family (dissolutions, legal separations, nullities, Domestic Violence Prevention Act, parentage, petition for custody and support, Title IV-D child support matters where custody or visitation is an issue, and any other Family Law matters related to custody or visitation is an issue and any other family law matters related to custody or visitation), juvenile and probate guardianship proceedings.
- (4). All references in the Protocol to Family Court, include any division of the Superior Court, hearing matters involving child custody and visitation, including Juvenile Court and Probate Court.(5).

"CLETS Civil Restraining Orders" include personal conduct, residence exclusion, stay away, and other orders issued under the Domestic Violence Prevention Act in the Family Code or Section 213.5 of the Welfare & Institutions Code.

B. PURPOSE

This protocol is intended to set forth the procedures for communication between the Courts about the issuance of Criminal Court protective orders and civil restraining orders including those orders involving child custody and visitation, where the same restrained person and protected person are involved in both orders. It is important to permit appropriate visitation between a criminal defendant and his or her children_pursuant to civil court orders, but at the same time provide for the safety of the victim or witness by ensuring that a criminal court protective order is not violated. Since there are large numbers of cases in

the criminal courts that have related matters in the Family, Juvenile, or Probate Courts, it is vital that there be a process for communication between the divisions of the court dealing with the same parties and families, and a process for the modification of orders to insure consistency between various court protective orders.

C. PROCEDURE IN THE CRIMINAL DOMESTIC VIOLENCE COURT

(1). Where the Restrained and Protected Persons have Children Together

When the Criminal Court issues Criminal Protective Orders protecting

Victim(s), the Criminal Court shall inquire of the defendant (restrained person)

whether there are any children of the relationship between the defendant and the

victim (protected person), and whether there are any Court Orders for

custody/visitation of those children. If there are children, the Criminal Court shall

consider whether peaceful contact should be allowed for purposes of visitation of the

defendant with the children. The Criminal Court shall also inquire as to whether there

are any other protective/restraining orders involving the defendant and the victim.

Subject to available resources, including the court's Lotus Notes Domestic Violence

Program, the court shall examine available data bases for existing protective or

restraining orders, before issuing permanent orders.

(2). When the Protected Persons Include Minor Children of the Restrained Person

When the Criminal Court issues No Contact and/or Stay Away Orders from the minor children of the defendant:(a). The Criminal Court shall:

- (1). Promptly send a copy of its Order to the Family Court.
- (2). Notify the defendant of his or her rights to seek a modification and of the necessity of returning to the Criminal Court to modify the Criminal Court protective order.

(3). When the Victim is Present in the Criminal Court

If the victim is present in Criminal Court when the Criminal Protective Order is issued, the Court shall provide the victim with a copy of the Criminal Protective Order. If the victim is not present in Court, the Court will provide the victim with a copy of the Criminal Protective Order.

(4). Modification of Criminal Protective Orders in Criminal Court.

Because Criminal Protective Orders supercede Civil Protective Orders, to the extent they are inconsistent, it is important that the process of modification be easily available.

- (a). The District Attorney's Office may, at any time, place the issue before the court at the request of a victim or the Family, Juvenile or Probate Court.
- (b). The Probation Department may place the issue before the court at the request of a defendant, victim, or the Family, Juvenile or Probate Court.
- (c). The defendant or his/her counsel may place the issue before the court.

- (d). Upon a proper request pursuant to this protocol, the Criminal Domestic

 Violence Court shall place the matter on calendar on its own motion. The

 Court, in its discretion, may prepare a Standing Order for this purpose.
- (e). Copies of any applicable CLETS civil restraining orders and custody and visitation orders shall be attached to the Application to Modify Criminal Protective Order. The Application shall have the case numbers of both the Criminal Court case and any Family, Juvenile, or Probate cases involving the defendant and the victim on it. Copies of the application shall be placed in the applicable court files. The requesting person will be responsible for personal service 5 days before the hearing on the defendant and all other appropriate parties and agencies, including the District Attorney's Office, the Probation Department (if the defendant's on formal probation), the Public Defender's Office, and the defendant or victim. A copy of the Application to Modify Criminal Protective Orders shall be served on the District Attorney and the Probation Department at least 5 days in advance of the scheduled hearing date. The District Attorney shall send a copy of the Application to the victim at his or her last known address. The Sheriff's Office shall include service of these documents with their current process for civil restraining order service.

(5). Procedure After the Criminal Court Hearing on Modification.

After the hearing on Modification of the Protective Order, the Criminal

Court shall send to the applicable Family, Juvenile, or Probate Court for inclusion

in its files, a copy of the Modified Protective Order or Order Denying Motion to Modify Criminal Protective Order (or Minute Order). The District Attorney shall send a copy of the new Criminal Protective Order, or the Order Denying the Motion to Modify Criminal Protective Order (Or Minute Order) to the victim at his or her last known address.

(D). Procedure in Family, Juvenile and Probate Courts

(1). Criminal Record Information to be made Available to the Family Court.

Subject to available resources, the Family, Juvenile, and Probate Courts or their designee(s) shall review appropriate databases for existing restraining/protective orders involving the same restrained and protected parties, before issuing permanent CLETS Civil Restraining Orders.

(2). Provisions For Safe Access to Children

Any order of the Family, Juvenile, or Probate Court that permits contact between a restrained person subject to CLETS restraining orders and his or her children shall contain specific language setting forth the schedule for such contact and the safe exchange of the children. Such an order shall not contain language that conflicts with a Criminal Protective Order that provides for no contact, or limits access to, the other parent.

(E). Communication between the Courts and Related Agencies

(1). Subject to available resources, any Court issuing protective/restraining orders must make reasonable inquiries to determine the

existence of other protective/restraining orders involving children of the protected and restrained parties.

(2). Any division of the Superior Court may provide copies of Criminal Protective Orders, CLETS Civil Restraining Orders, Court Minutes, and applicable custody and visitation orders to other divisions of the Court.

(F). Request to modify a Criminal Restraining Order

- (1). The Family Law Commissioner may recommend a modification by utilizing the Request for Hearing Form. The Commissioner may direct an attorney or party to complete the Request for Hearing Form and attach a copy of a Minute Order reflecting the Commissioner's recommendation to the Criminal Court.
- (2). A Defendant, protected person, deputy district attorney, criminal defense attorney, probation officer, attorney for the defendant, or attorney for the protected person may request a modification of a restraining order by utilizing the form "Request for Hearing on Protective Order Modification." The form is available at the Merced County Superior Court.

(Effective January 1, 2009)

RULE 15: WITHDRAWAL OF STIPULATION TO COMMISSIONER

Any withdrawals of a stipulation to a Commissioner must be made five (5) days prior to a hearing or trial if the Commissioner is known at least ten (10) days before such hearing or trial. (Also refer to Rule 16:a).

(*Effective July 1, 2004*).

RULE 16: CRIMINAL RULES

a. Criminal Calendar

All criminal matters shall be heard per the court's published calendar. (See court's website www.mercedcourt.org or contact Court Administrator's Office).

The Judge or Commissioner whose name appears on the calendar is the Judge assigned to the calendar for purposes of Code of Civil Procedure Section 170.6(a)(2).

(Amended January 1, 2010)

b. Writ of Habeas Corpus

The Clerk shall not file any petition for writ of habeas corpus that is not accompanied by a complete copy including any exhibits, attachments or other materials sent with the original. All the papers shall be returned to the petitioner with the admonition to comply with this rule if the petition is resubmitted.

c. Request For Search and Arrest Warrants

During court hours all requests for search warrants or arrest warrants may be submitted to any available judge.

d. Discovery

All parties shall comply with Penal Code Sections 1054-1054.9.

e. Stipulated Discovery Order

All parties shall comply with the Stipulated Order re Discovery in Felony Cases filed April 12, 2000 (posted in Clerk's Office) unless an exception is requested at formal arraignment. (See court's website to view document). (See Appendix "I").

f. Minute Orders (Cases Where Minute Orders Prepared by the Clerk Immediately After Case is Concluded and Delivered in Court)

- (1). Immediately upon the conclusion of every felony case scheduled for an arraignment, bail review hearing, pre-preliminary hearing or preliminary hearing, or trial, the Courtroom Clerk shall cause a copy of the minute order or probation order to be hand-delivered to the deputy public defender or defense attorney and the deputy district attorney who are present and appearing as attorney of record.
- (2). Prior to delivering copies of the minute order as set forth above, the Judge and Clerk shall make sure the information on the minute order is correct.
- (3). The deputy district attorney, deputy public defender or defense attorney shall, before leaving the courtroom, determine if the following information in the order is correct:
 - (a). Date and time of next court appearance; if any.
 - (b). Purpose of next court appearance.
 - (c). Own Recognizance Release status.
 - (d). Custody and bail amount.
 - (e). The terms of probation, if applicable.
- (4). If an attorney determines that any of the information in #3 is not correct, the attorney shall immediately advise the judge and clerk.
- (5). If the judge agrees that any of the information in #3 is not correct, the judge and clerk shall immediately correct the minute order.
- (6). This procedure shall also apply to any misdemeanor offense which involves violence or a threat of violence where attorneys of record are present.

g. Tape Recordings

No audio tape recording shall be marked for identification, admitted as an exhibit, or played before the Judge or jury unless the proponent thereof first provides the Court and opposing counsel with a written transcript of the tape recording. (Repealed Eff. January 1, 2009, See Rule 16:n).

h. Jury Instructions

Counsel shall file, before 4:00 p.m., on the first day of trial, a list of CAL CRIM (latest edition) instructions requested. If any proposed additional instructions are requested they shall be submitted in writing with authorities placed at the top of the writing. Proposed pattern jury instructions which have been modified by a party, shall clearly indicate any proposed change.

i. Felony Bail Schedule

The Judges shall adopt a Felony Bail Schedule for use by the Court and Merced County law enforcement agencies.

j. Notice of Motion

The notice of motion designating a motion pursuant to Penal Code Section 1538.5 shall specifically describe and list the evidence which is the subject of the motion to suppress; and shall specifically state the theory or theories which shall be relied upon and urged for the suppression of evidence; and cite the specific authority or authorities which will be offered in support of the theory or theories upon which suppression of the evidence is urged.

k. Filing of Motions

- (1). Unless otherwise ordered by the court, motions in felony cases shall be filed in writing no later than five (5) court days before the hearing, with proof of service on all parties.
- (2). Unless otherwise ordered by the court, motions in misdemeanor cases shall be filed in writing no later than ten (10) court days before the hearing.
- (3). Motions shall contain a notice of motion, the motion itself, a declaration or affidavit in support thereof and a memorandum of points and authorities.
- (4). Responsive pleadings and points and authorities in opposition to either category of motion shall be filed no later than two (2) court days prior to the hearing with proof of service on all parties.
- (5). Each paragraph of any declaration shall be numbered sequentially. The original and all copies of exhibits and attachments shall be tabbed and shall be referred into the pleadings or papers by tab identification.

l. Defendant's Clothing

The attorney representing a defendant in the custody of the Sheriff in a criminal matter shall make timely and appropriate arrangements to ensure that the defendant is suitably dressed for trial before the case is assigned to a trial department.

m. Motions Made for Release on Own Recognizance or Bail Modification

- (1). When a motion for release on own recognizance or bail modification has been made to the court, and granted in whole or in part, or granted conditionally or with limiting terms, and a subsequent motion is made by the same party in the same case for a similar order upon materially changed circumstances, the subsequent motion shall be accompanied by a disclosure that:
 - (a). A prior motion has been made,
 - (b). When and to what judge it was made,
 - (c). What the nature of the motion was,
 - (d). What order or decision was made thereon, and
 - (e). What materially changed circumstances are claimed to be shown.
- (2). Any order made on subsequent applications failing to comply with these requirements may be vacated or set aside on ex parte application or on the court's own motion at any time.

n. Sound Recordings to be Offered as Evidence at Trial

(1). Any party intending to offer a sound recording in evidence at a trial shall prepare a transcript of the sound recording at least two (2) weeks before trial and serve such transcript and a copy of the recording on all other parties. Any party disputing the accuracy of the transcript shall prepare his own transcripts of the sound recording identifying the disputed portions and serve that transcript on all other parties no later than three (3) days before trial. When disputed, the parties shall meet and confer in a good faith effort to resolve their differences.

- (2). In the event that the differing versions cannot be resolved by the parties, they shall alert the Presiding Judge at the trial readiness haring to reserve an appropriate amount of time in the assigned trail court to settle the dispute before summoning a jury panel.
- (3). Nothing herein is intended to contravene the applicable rules of discovery or valid claims of confidentiality provided by law. If a party is entitled to maintain the confidentiality of a sound recording and chooses to do so until trial, a proposed settled transcript shall be lodged with the court when the sound recording is marked for identification. The opposing party shall be allowed a reasonable opportunity to listen to the sound recording, prepare a proposed transcript and lodge objections before the sound recording is received as evidence.
- (4). Each transcript shall be certified by the person preparing it. In the event the sound recording is in a language other than English, the certification shall also include a certification by the person translating the sound recording.
- (5). The propounding party shall prepare a sufficient number of copies of the transcript for distribution as ordered by the court.
- (6). Any party intending to electronically present an exhibit at trial shall procure their own technical assistance for such a presentation. If the Court's technical assistance is to be requested, each party making such a request must comport with the Court's procedures, including but not limited to submitting the request on the Court's form at least 2 court days prior to the scheduled presentation date. Both the procedure and form are attached hereto in Appendix H. (Amended January 1, 2010).

o. Requests to Conduct Media Coverage

Requests for media coverage (photographing, recording or broadcasting of court proceedings by the media using television, radio, photographic or recording equipment) in the courthouse or courtroom shall comply with the provisions of California Rules of Court, Rule 980 1.150. The court will rule on the request at the hearing.

p. Dangerous, Large or Bulky Exhibits

- (1). Permission from the judge assigned to the hearing or trail must be obtained before a party may bring dangerous, large or bulky exhibits into the courthouse. If possible, the party should substitute a photograph, technical report, or dummy object for proposed exhibits which are either:
 - (a). Inherently dangerous, such as:
 - (1). Firearms;
 - (2). Any type of explosive powder;
 - (3). Explosive chemicals, toluene, ethane;
 - (4). Explosive devices, such as grenades or pipe bombs;
 - (5). Flammable liquids such as gasoline, kerosene, lighter fluid, paint thinner, ethyl-ether;
 - (6). Canisters containing tear gas, mace;
 - (7). Rags which have been soaked with flammable liquids;

- (8). Liquid drugs such as phencyclidine (PCP), methamphetamine, corrosive liquids, pyrrolidine, morpholine, or piperidine;
- (9). Samples of any bodily fluids, liquid or dried; or
- (10). Controlled or toxic substances;
- (11). Corrosive or radioactive substance.

Large and cumbersome, such as a ladder, sewer pipe, or automobile chassis.

- (2). If a party believes the exhibit should be brought into the courtroom without substitution, an application for permission must be made in writing and describe the materials to be brought into the courtroom and the reason a substitution should not be made. The option of viewing the materials at another location may be considered by the court. (Refer to Rule 13 for required written statement).
- (3). Evidence received in any case shall be limited to those items required in the case and shall be retained by the court for the minimum time required by law, unless good cause is shown to retain the evidence for a longer period of time.
 - (4). No exhibits shall be accepted by the Clerk or exhibits custodian unless:
 - (a). All containers of controlled substances are securely sealed and protected against breakage to safeguard court personnel, so that the contents cannot be spilled and odors cannot be emitted;
 - (b). All containers of liquid substances, including bodily fluids, are securely sealed and protected against breakage to safeguard court personnel, so personnel are not exposed to the contents and odors;
 - (c). All objects containing bodily fluids or dangerous, controlled or toxic substances (e.g., bloody shirt, gasoline soaked rag, etc.) are placed in

containers that are securely sealed and protected against breakage so that odors cannot be emitted and court personnel are safeguarded;

- (d). All Firearms are secured by a nylon tie or trigger guard, and have been examined by the bailiff to determine that they have been rendered inoperable;
- (e). All sharp objects, such as hypodermic needles, knives, and glass, are placed in containers that are securely sealed and protected against breakage, which will safeguard personnel;
- (f). All containers with liquid substances are clearly marked and identified as to type and amount;
- (g). All containers of controlled substances are clearly marked, identified, weighed, and sealed;
- (h). All cash is specifically identified, whether individually or packaged, as to the total amount and number of each denomination.
- (5). All exhibits must be individually tagged with the proper exhibit tag, properly completed, and securely attached to the exhibit. Any exhibit improperly tagged, marked, weighed, or identified will not be accepted by the court. Unless otherwise ordered, unidentified or improperly identified liquids, containers, controlled substances, or other suspect substances shall be returned to the party offering them.
- (6). When a dangerous, large or bulky exhibit that has been marked and identified or received in evidence poses a security, storage or safety problem, on recommendation of the Clerk of the court, the court may order that all or a portion of it be returned to the party that offered it. In the case of exhibits offered by the prosecutor in a criminal case, the court may order that the exhibits be returned to the law enforcement agency involved. The order shall require that a full and complete photographic record of the exhibit or the portion returned be substituted for the exhibit. The party who offered

the exhibit shall provide the photographic record. The party or agency to whom the exhibit is returned shall be responsible for maintaining and preserving the exhibit until there is a final disposition of the action or proceeding. All exhibit tags and other identifying markings or information concerning each exhibit shall remain in place and shall not be disturbed. Each exhibit shall be maintained intact and in the same condition as during trial. In the event further proceedings of any court having jurisdiction of the matter require the presence of he exhibit, the party or agency to whom it was returned shall promptly deliver the exhibit to the appropriate court, with notice to all parties.

q. Pass request

- (1). The court has approved a form for use whenever an inmate requests a pass from the jail. The form is available at the Criminal Division of the clerk's office.
- (2). If the pass is requested for medical reasons the inmate should complete a release of information form which is also available at the Criminal Division of the clerk's office.

(Effective July 1, 2004; Revised January 1, 2009; Amended January 1, 2010).

RULE 17: COURT EXECUTIVE OFFICER

Pursuant to Government Code § 69898, the Court Executive Officer, under the discretion of the Presiding Judge, shall exercise all of the powers, duties and responsibilities as Clerk of the Merced Superior Court. These powers, duties and responsibilities shall include all of those previously performed by the County Clerk as Ex Officio Clerk of the Merced County Superior Court, and those pertaining to the Grand Jury prescribed by Penal Code §§ 900 and 933. Pursuant to Government Code § 26800, the County Clerk is hereby relieved of any obligation imposed by law with respect to these powers, duties and responsibilities. Pursuant to Government Code § 69893 and Code of Civil Procedure § 195, the Court Executive Officer shall also serve as Jury Commissioner.

The duties of the Court Executive Officer shall include, but are not necessarily limited to, those set forth in California Rules of Court Rule 10.610 and such other duties as may be assigned by the Presiding Judge. The Court Executive Officer shall be responsible for the selection, retention and direction of all non-judicial personnel of the court. The Court Executive Officer shall be an exempt employee whose selection shall be recommended by a majority of the Executive Committee and approved by a majority vote of all Merced Superior Court Judges, who may be terminated by a majority vote of all Merced Superior Court Judges. The Court Executive Officer shall serve as a non-voting member of the Executive Committee and shall serve as secretary. The secretary is responsible for conducting all elections and counting all votes.

(*Effective July 1, 2004*).

RULE 18: COURT COMMISSIONERS

Court Commissioners shall be exempt employees who shall serve at the pleasure of the judges of the Merced Superior Court. They shall be selected by the Executive Committee and may be terminated by a majority of all Merced Superior Court Judges.

(*Effective July 1, 2004*).

RULE 19: NOTICE TO APPEAR PURSUANT TO V.C. § 40500

Pursuant to California Vehicle Code Section 40902, the court hereby provides that a defendant may elect to have a trial by declaration upon any alleged infraction involving a violation of the California Vehicle Code or any local ordinance adopted pursuant to said code. Testimony and other relevant evidence may be introduced in the form of a notice to appear issued pursuant to Vehicle Code Section 40500, a business record or receipt, a sworn declaration of the arresting officer, or a written statement or letter signed by the defendant. A request for trial de novo pursuant to Vehicle Code Section 40902(d) must be filed no later than twenty (20) days from the date of mailing of the court's original decision. (Effective July 1, 2004).

RULE 20: <u>RESERVED</u>

RULE 21: APPELLATE DEPARTMENT

a. Sessions

Regular sessions of the Appellate Department shall be held on the fourth Monday of each month at 1:15 p.m., unless that day falls on a holiday in which event the session shall be held on the third Monday of that month at 1:15 p.m. Special sessions shall be held at the call of the Presiding Judge of the Appellate Department.

b. Calendaring

Immediately upon the filing of the record on appeal in the Court, the Clerk shall set the case for oral argument on the next regular session which allows the parties time to comply with the briefing schedule set forth in Rule 8.706, California Rules of Court.

c. Briefs

Briefs shall be prepared, served and filed as provided by Rule 8.706, California Rules of Court. Counsel shall also deposit with the Clerk three (3) legible copies for the assistance of the members of the Court. The Clerk shall not file any brief which does not conform to the rules or which is tendered for filing after the time fixed by that rule or by an order extending the time for filing.

d. Motions

All requests for relief from any default shall be heard at a regular session, unless a different time for the hearing is designated by the Presiding Judge of the Appellate Department. Requests for extensions of time for filing briefs or for continuances of a hearing, which are timely filed, may be granted by the Presiding Judge of the Appellate Department or set by him or her for consideration at a regular or special session.

e. Oral Argument

Unless otherwise ordered, counsel for each party shall be allowed fifteen (15)

minutes for oral argument. The appellate or the moving party shall have the right to open

and close.

(Effective July 1, 2004).

RULES 22-199:

<u>RESERVED</u>

RULE 200:

PROBATE RULES - PREFACE

It is not the court's intent in adopting these rules to cover every anticipated

question or concern, but rather to provide a few additional guidelines, which are

considered important for local practice. Nor does the Court intend these rules to be a

research tool. The Probate Department of the Merced Superior Court encourages the use

of the Probate Code, California Rules of Court, Judicial Council forms, and the

publications of the Continuing Education of the Bar as valuable guidelines and references

with respect to local practice.

Unless stated otherwise, all references in this Rule are to the California Probate

Code.

a. Time and Place of Hearing

All uncontested probate hearings and contested matters, which are not expected to

exceed twenty (20) minutes in length, shall be set at 8:30 a.m. on Monday – Thursday.

All hearings which are likely to exceed twenty (20) minutes in length should be set at

10:00 a.m., on a Monday.

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b. Applicable Rules

Except as otherwise provided in these rules, all provisions in the local general and civil law and motion rules apply to probate proceedings.

c. Appearances

- (1). There is no Probate Commissioner or Examiner in Merced County. Tentative rulings are not given.
- (2). Appearances are required on all petitions for appointment of conservators, and/or guardians and confirmation of sale of real or personal property and on any petition to which objections are filed.
- (3). If the moving party does not appear on any calendared matters, cases involving issues which are incomplete or questionable may be continued one to two weeks or may be dropped from calendar, depending on the circumstances.
 - (4). See **Rule 4d** for telephone appearances.

d. Forms Approved by the Judicial Council

All probate forms printed and approved by the Judicial Council are mandatory in Merced County. Failure to use such forms may result in the Clerk's refusal to file a submitted document.

e. Orders

Except in the case of confirmation of sales, contested matters and orders requiring information from a governmental agency, the moving party shall submit the proposed order at least three (3) court days prior to the hearing date. Orders shall have the scheduled hearing date, time, and department noted on the face sheet below the title of the document.

f. Appointment of Representative(s)

- (1). Where a petition seeks the appointment as personal representative of a person or persons other than the petitioner, a written consent to serve as personal representative must be filed for each such proposed personal representative.
- (2). Each personal representative must execute and file an Acknowledgement of Receipt of Judicial Council Form "Duties and Liabilities of Personal Representative" (Form DE 147) before the court issues letters.

g. Notices

- (1). In a petition for probate of a will, all persons and organizations named in the will or codicils shall be listed.
- (2). If a named devisee predeceased the decedent, that information must be provided in the notice. In cases where the devisee dies after the decedent, the date of death must be stated and notice must be mailed in care of his or her personal representative if one has been appointed, or alternatively, to another appropriate representative.
- (3). A declaration specifying good faith efforts to identify and locate heirs or beneficiaries is required where the petitioner cannot determine the name or address of an heir or beneficiary to whom notice is required.
- (4). If there are no known heirs of the decedent and no heirs of a predeceased spouse pursuant to Section 6402.6, a declaration to that effect shall be filed setting forth the basis for the declaration and the efforts made to locate all such heirs.
- (5). The trustee of a living trust who is a beneficiary of a will shall be listed as a devisee and noticed.

(6). The Clerk does not handle the preparation, mailing or publication of notices. Notices must be prepared and submitted at the time of filing the applicable petition, and the moving party is responsible for all required mailings and newspaper publications.

h. Defective Notice

If the publication is correct but the mailing is defective, the hearing normally will be continued to allow enough time for the mailing of the required amended notice, and republication is not required. If the mailing is correct but the publication is defective, the matter must be taken off calendar and a new notice must be given by publication and mailing.

i. Bond

- (1). Pursuant to Section 10453, if a bond is otherwise required, if full authority under the Independent Administration of Estates Act (IAEA) is sought, and if the personal representative at the time of the initial petition for probate intends to sell real property through a notice of proposed action (without court confirmation), the latter fact shall be stated in the petition to enable the court to determine whether the initial qualifying bond should be fixed to include anticipated proceeds from the sale of real property.
- (2). Every person appointed as personal representative shall give a bond approved by the court before letters are issued unless otherwise waived in the will or in writing. If 2 or more persons are appointed the court may require a separate bond from each or a joint and several bond. If a joint bond is furnished, the liability on the bond is joint and several.
- (3). If written waivers are attached to the petition, bond will be waived by the court pursuant to Section 8481, provided all heirs or beneficiaries are competent to act. If any such person is incompetent (e.g. minors) an appropriate representative is required to

waive bond on behalf of such person. This section does not apply if the will requires a bond.

- (4). A personal representative who is a non resident of California and who is nominated to serve without bond, still may be required to post such bond as the court may require, where good cause of such a requirement is shown.
- (5). If the will names two or more persons to serve as executors but not all serve and the will does not expressly waive bond if fewer than all serve, the court shall require each executor to give a bond unless the court waives this requirement under Probate Code section 8481(a)(2).
- (6). It is the duty of the fiduciary or fiduciary's attorney, upon becoming aware a bond is insufficient to immediately apply for an order increasing the bond. Such application accompanied by a proposed order, may be made ex parte. See CEB publications for forms.

j. Creditor's Claims

- (1). Creditors shall file their claims with the Clerk's office and mail a copy to the personal representative. The disposition of all such claims must be reported to the court on the Judicial Council "Allowance or Rejection of Creditor's Claim" form, prior to any distribution. This requirement also applies to fiduciaries acting under the IAEA.
- (2). If the personal representative is acting under the IAEA, the court will not review the personal representative's allowance or rejection of a creditor's claim unless good cause is shown, except as to claims of the personal representative or the attorney. All claims of the personal representative or the attorney must be submitted to the court for approval.

(*Effective July 1, 2004*).

RULE 201: ACCESS TO JUVENILE COURT RECORDS

Juvenile court records may not be obtained or inspected by either civil or criminal subpoena. If a person/agency is not entitled to access under Welfare and Institutions Code sections 827-830.1, then he/she must obtain a court order from the Presiding Judge of the Juvenile Court, or another judicial officer designated by the Presiding Judge. An intentional violation of Welfare and Institutions Code section 827 is punishable by a fine of up to \$500.00.

A. Definition of Juvenile Court Records

Pursuant to Rule 5.552, subdivision (a) of the California Rules of Court, "juvenile case file" included:

- (1). All documents filed in a juvenile court case;
- (2). Reports to the court by probation officers and social workers of child welfare services programs;
- (3). Documents made available to probation officers and social workers of child welfare services programs;
- (4). Documents relating to a child concerning whom a petition has been filed in juvenile court that are maintained in the office files of probation officers and social workers of child welfare services programs;
- (5). Transcripts, records, or reports relating to matters prepared or released by the court, probation department, or child welfare services program; and
- (6). Documents, video or audio tapes, photographs and exhibits admitted into evidence at juvenile court hearings.

Records relating to juvenile contacts or investigations which are maintained by a law enforcement agency, probation department or Department of Children and Family Services are confidential even if juvenile court proceedings have not been instituted.

(2) Access Without a Court Order

Pursuant to Welfare and Institutions Code sections 827-830.1, specified persons/agencies are entitled to access to juvenile records without a court order, excluding portions of the record which are otherwise confidential, and protons of the record which include the names and information of other children. In order to obtain access or copies of the records, the person/agency entitled to access must file a Declaration in Support of Access which are available and maintained in the Superior Court Clerk's Office, Juvenile Division. The following persons/agencies are entitled to access to juvenile records without a court order:

- (a) Subject child,
- (b) Attorneys for the parties, and hearing officers, probation officers and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the child,
- (c) Court personnel,
- (d) Attorney authorized to prosecute adult criminal or juvenile matters under California law (district attorney, city attorney, city prosecutor),
- (e) Superintendent or designee of the school district where the child is enrolled or attending school (see also Welf. & Inst. Code Section 828.3).
- (f) Member of Child Protective Agencies per Penal Code section 11165.9 (police, sheriff, county probation, Department of Children and Family Services),
- (g) State Department of Social Services for the purposes delineated in Welfare and Institutions Code section 827,

- (h) Members of children's multi-disciplinary teams (see also Welf. & Inst. Code, sections 830, 830.1), and
- (i) Persons/agencies providing treatment or supervision of the child,
- (j) A state or local child support agency for the purpose of establishing paternity and establishing and enforcing child support orders.

(3) Access to Delinquency Records Where Petition Sustained on Offense Listed in Welfare and Institutions Code section 676(a).

Pursuant to Welfare and Institutions Code section 676(d), when a petition has been sustained for an offense following information contained in the court file shall be available for public inspection: (a) the charging petition, (b) the minutes of the proceedings, and (c) the orders of adjudication and disposition of the court.

(a) The name of a minor found to have committed one of the serious violent offenses listed in Welfare and Institutions Code section 676(e) shall not be confidential, unless the court orders the name to be confidential based on good cause.

(4) Petitions to Prohibit Disclosure of Delinquency Records

Pursuant to Welfare and Institutions Code section 676(e) any party may petition the juvenile court to prohibit disclosure to the public of any file or record. The juvenile court shall prohibit disclosure of such record if it finds that the harm to the child, victims, witnesses, or public from the disclosure outweighs the benefit of public knowledge.

(5) Welfare and Institutions Code section 827 & 828 Petitions

All Petitions for Disclosure of Confidential Juvenile Records and Petitions To Obtain Report of Law Enforcement Agency/Juvenile (Judicial Council Form J570 and JV-575, respectively) shall be filed at the Juvenile Court. (*Effective Jan 1, 2009*)

RULES 202-299: RESERVED

RULE 300: PETITION FOR APPROVAL OF MINOR'S COMPROMISE

a. Contents of Petition

A petition for court approval of a compromise or covenant not to sue under the Probate Code or CCP 372 must be verified by Petitioner and contain a full disclosure of all relevant information bearing upon the reasonableness of the compromise, including:

- (1) Name, birthdate, age and sex of minor;
- (2) An account of the facts and circumstances which gave rise to the claim or injury;
- (3) A description of the nature and extent of the injury and whether it is permanent or temporary;
- (4) All doctors reports containing a diagnosis, prognosis and present condition of the claimant;
- (5) Where payment for medical treatment is sought all medical expenses, insurance payments and net amounts owed to each provider;
 - (6) The amount of attorney fees, their basis and an itemization of costs;
 - (7) The gross and net amount of the proposed settlement;
 - (8) How the proceeds of the settlement will be distributed;
 - (9) Amounts paid to other claimants;
- (10) Whether or not the petitioner is a plaintiff in the same action as the minor or a claimant against the recovery, and if so whether the pendency or disposition of petitioner's claim has affected the minor's compromise;

- (11) If settlement money is to be deposited in an account subject to withdrawal only upon order of the court, the name and address of the depository;
- (12) Whether notice pursuant to Welfare and Institutions Code Section 14124.73 has been given;
- (13) If an order for payment to special needs trust is requested, a statement of the method by which all statutory liens will be satisfied under Probate Code 3604.

b. Attorney Disclosure

If the petitioner has been represented or assisted by an attorney the petition must disclose the name, state bar number, law firm and business address of the attorney. It must also disclose whether the attorney became involved at the instance of any party against whom the claim is asserted, or an insurance carrier employed by any other party. If any fees or other compensation has been paid the petition must disclose who paid those fees or other compensation; if no fees have been paid, then whether the attorney expects any fees and if so the amount and who will pay them. The terms of the agreement between the petitioner and the attorney must also be set forth in the petition.

c. Personal Appearance

The person compromising the claim and the minor must attend the hearing unless the court, for good cause, dispenses with the requirement of personal appearance.

d. Attendance of Witnesses

The court may require witnesses, including the treating physician, to attend the hearing.

e. Withdrawal of Funds

A petition for withdrawal of funds from the account may be considered ex parte or set for hearing at the discretion of the court. Parents are advised that monies in blocked accounts are not available for payment of services ordinarily provided by parents.

(*Effective July 1, 2004*).

FAMILY LAW

GENERAL POLICY STATEMENT

It is the policy of the Merced County Superior Court to manage all family law cases from the time the first order to show cause or at issue memorandum is filed, to focus on settlement at the earliest possible date, to reduce the cost of litigation and to reach a fair and final resolution of the case expeditiously. These rules are intended to provide generally uniform practice and procedures among departments involved in family law matters in Merced County. Due to often unique facts or procedural inconsistencies, these rules should be considered as guidelines to which the Court will generally adhere.

RULE 401: MATTERS ASSIGNED TO THE FAMILY LAW DEPARTMENT

All proceedings filed in the following matters are currently assigned to the Family Law Department:

- (A). Matters arising from the California Family Code, including cases where the Local Child Support Agency appears on behalf of the County of Merced or any party.
- (B). Matters arising from the Uniform Divorce Recognition Act, Family Code §\$2090-2093.
- (C). Matters arising from the Uniform Child Custody Jurisdiction Act, Family Code §§3400-3425.
- (D). Matters arising from the Uniform Parentage Act, Family Code §§7600-7643.
- (E). Matters arising from the Domestic Violence Prevention Act, Family Code §§6200-6305.

- (F). Matters arising from the UEIFSA provision of the Family Code and orders to show cause, motions, or trials in actions brought by the Local Child Support Agency under the provisions of Family Code Sections 17000 et. seq.
- (G). Matters arising from Family Code §§4900-4903, Support of Adult Child(ren) or Parents.
- (H). Post-dissolution judgment actions, involving omitted or reserved property issues.
- (I). Non-marital property right actions consolidated for trial with Family Code, except those cases in which a jury trial has been demanded.
 - (J). Mediation proceedings in Guardianship actions. (*Effective July 1, 2004*).

RULE 402: MOTIONS AND ORDER TO SHOW CAUSE CALENDAR

a. Calendar Management Short and Long Cause Matters

- (1). Short Cause matters are those matters requiring no more than 15 minutes of the Court's time. Counsel shall be prepared to present their case based upon pleadings, declarations, and offers of proof. Counsel shall be prepared to explain why any live testimony is necessary. Generally no live testimony is allowed in Short Cause matters pursuant to CRC 323 and *Reifler v. Superior Court* (1974) 39 Cal.App.3d 479. Short Cause matters shall be set for hearing on Tuesdays, Thursdays or Fridays at 8:15 a.m. or on Tuesdays or Fridays at 1:30 p.m..
- (2). Long Cause Matters are those matters requiring more than 15 minutes of the Court's time. The long cause calendar shall be heard on Mondays at either 8:15 a.m. or 1:30 p.m. Counsel shall meet and confer prior to the call of the case and determine if the anticipated hearing time exceeds 15 minutes. If both concur they shall appear in court and obtain a long cause date. If the time estimate of either party is exceeded, the Court may in its discretion, rule without further hearing; defer the matter to the end of the calendar if time permits, continue the matter to the next available date or order the matter off calendar.
- (3). Only matters involving two self-represented parties shall be set on Wednesdays at 8:15 a.m.

- (4). All case management conferences shall be heard in chambers as set by the Court.
- (5). These dates and times are subject to change. Refer to the court's website. (*Effective July 1, 2004*).

RULE 403: REQUEST TO READ FILE

A party that desires that the court read a particular pleading shall make such request prior to or at the commencement of the hearing. Absent such a request the court will not review the file prior to the hearing. This is requested as a courtesy and the court will review the file as necessary to make a proper decision, regardless of compliance. (Effective July 1, 2004).

RULE 404: NOTIFICATION OF OTHER PROCEEDINGS

Any moving or responsive papers involving children or domestic violence shall contain a statement notifying the Court of any action pending or jurisdiction being exercised by any other Court involving the same parties and/or children. Such information shall include the name and location of the court, the file number therein, the statutory basis for said action and a copy of the most recent order made in the action. (*Effective July 1, 2004*).

RULE 405: TIME LIMITATIONS OF FILING MOVING PAPERS

Absent any provision in the law or an order shortening time, any declarations, or points and authorities by the moving party, including any required notice to the Local Child Support Agency, shall be served pursuant to law and filed no less than 21 Court days prior to the date of hearing. Unless good cause is shown, failure to comply with this rule may result in the refusal by the Court to consider any papers not timely filed, or the imposition of monetary sanctions on counsel, or both.

(*Effective July 1, 2004*).

RULE 406: CONTINUANCES

If a motion for continuance is to be made the matter must be placed on calendar no less than five (5) Court days prior to the scheduled event along with payment of the filing fee.

(Effective July 1, 2004).

RULE 407: LACK OF APPEARANCE OR TARDINESS

- (A). Failure of the moving party or attorney to be present at the calendar call, or to have informed the court staff of his/her presence in another department, may result in the matter being removed from the calendar and, if the responding party has appeared, attorney's fees and costs may be awarded to the appearing party.
- (B). In the event the responding party or attorney fails to appear, the Court may continue the matter and award attorney's fees, or enter an order on the pleadings and the declaration or testimony of the moving party.
- (C). If, for any reason, the attorney or client is unable to be present at the time of the calendar call, the Court and opposing party shall be notified as soon as possible in person or by phone of the reasons for, and the extent of, such delay. (Effective July 1, 2004).

RULE 407.1: COURT CALL APPEARANCES

Except in contempt and work search orders to show cause where appearances are mandatory or unless otherwise ordered by the court, arrangements can be made through the Family Law clerk's office for an appearance by court call. Arrangements to appear by court call must be make at least 5 days prior to the date of appearance. Court call requires a fee be paid to court call unless a fee waiver is on file. Hearings on 8:15 a.m. or 1:30 p.m. calendars will be moved to 10:00 a.m. or 3:00 p.m. respectively if there is a court call request.

(*Effective July 1, 2004*).

RULE 408: PRE-HEARING SETTLEMENT EFFORTS

- (A). When the attorneys have informed the Court staff that they are conducting settlement, neither the attorneys nor the parties need be present at the calendar call and the matter will remain on calendar until heard, or otherwise disposed.
- (B). Copies of documents, intended to be offered as part of a case in chief, shall be provided to opposing parties at least two days prior to the Court hearing or as soon as information is available. A party may not wait until the time of the hearing to "surprise" the opposing party with proffered documentary evidence, except to impeach the veracity of a party or witness. If evidence is offered at a hearing without notice, it may constitute cause for a continuance and sanctions.
- (C). If a case is settled after calendar call but before the hearing, one of the attorneys shall inform the Judge or Court staff of that fact, whereupon the stipulation will be taken ahead of all contested matters. No party shall represent that a case is settled when there is "only one" issue remaining to be determined by the Court. (Effective July 1, 2004).

RULE 409: RULES GOVERNING CUSTODY AND VISITATION ISSUES

a. General

- (1). When a **Notice of Motion** or **Order to Show Cause** is filed, the Clerk will generally assign two court dates. The first date is **Orientation** and the second date will be a court hearing. Orientation is always conducted on Thursday at 12:15 p.m. and generally lasts up to 90 minutes. The clerk will assign a Mediation date at the conclusion of Orientation. Mediation days are Mondays, Wednesdays and Thursdays with the calendar commencing at 9:00 a.m.. The dates and times are subject to change. Refer to the court's website.
- (2). Attendance at Orientation is **mandatory**. However, attendance may be waived if the parties have attended mediation in the last 18 months or they live more than 250 miles from Merced and they obtain an Order from the court relieving them of their obligation to attend because one or more circumstance applies. If either of these circumstances apply and a party wishes to obtain a waiver of the obligation to attend Orientation they must complete the Merced County Local form, a copy of which is

reproduced in Appendix A attached hereto, and submit the form to the Clerk's office at least five calendar days prior to the scheduled Orientation.

- (3). If Orientation has been waived (by completion of the local form and signed by the Judge) the Clerk will assign a Mediation date at Orientation. If one party is excused from attendance at Orientation, the other party is not automatically excused and must attend Orientation. A Mediation date will be assigned at the time scheduled for Orientation whether one or both parties have been excused from attending Orientation. Any party excused from attending Orientation shall be obligated to contact the Clerk's office after the scheduled Orientation date to obtain the date and time set for Mediation of the matter. Failure to do so, resulting in a failure to appear at the time Mediation is scheduled, may result in a monetary sanction being ordered against the party failing to contact the Clerk.
- (4). The further court hearing will cover custody, visitation and all other issues brought up in the original Motion.
- (5). Counsel shall not participate in mediation. However, counsel shall have the right to be present, and review any agreement prior to being signed by his or her client.
- (6). If the parties reach an agreement at Mediation regarding custody and visitation, that agreement will be adopted by the court immediately following the mediation.
- (7). If the parties do not reach an agreement at Mediation, the Mediator will make a recommendation to the court which they feel is in the best interests of the children. The recommendation will also contain a separate rationale, which will be contained in a confidential envelope subject to the same review provisions set forth in sub-section I, here below. This recommendation will be available 1 to 2 days after mediation and can be picked up at the Clerk's office for review. At the further hearing the Court will generally:
- (1). Use the Mediator's recommendation as a guideline in making temporary or permanent orders; and/or
 - (2) Order a Merced County Family Court Services Assessment (short evaluation),
 - (3) Order a Merced County Family Court Services extended evaluation,
 - (4) Appoint minor's counsel or

(5) At the parties' request, appoint a private evaluator to do an extended evaluation.

b. Cost of Evaluations/Minor's Counsel

- (1) If a Merced County FCS Assessment is ordered, the fee, effective April 1, 2004, shall be \$550. This amount is subject to review by the court, with any changes to be posted in the Family Law clerk's office. Each party shall be responsible to pay one half of this amount, with the court reserving jurisdiction to reallocate the fee in future court proceedings.
- (2) If a Merced County FCS Evaluation is ordered, the fee, effective April 1, 2004, shall be \$1500. This amount is subject to review by the court, with any changes to be posted in the Family Law clerk's office. Each party shall be responsible to pay one half of this amount, with the court reserving jurisdiction to reallocate the fee in future court proceedings.
- (3) The following standard orders shall apply to all FCS assessments and evaluations ordered by the court:
- (a) Each party will be ordered to report forthwith to the Merced County

 Department of Revenue and Reimbursement for payment of their one-half the fee. The

 department will charge a 15% payment fee if arrangements are made for payments (this

 additional charge will not be required if payment of the one-half is made in full). The

 evaluation or assessment will commence only after one-half of the full cost is made. Any

 balance owing is deemed Child Support for purposes of collection.
- (b) The parties are ordered to make themselves and any children available for all appointments as scheduled for the evaluation or assessment, and shall promptly provide the evaluator with any documentation or information as requested. The evaluator

may make an ex-parte request to the court for a drug testing if an issue arises regarding alleged drug use. The parties are to comply with such order as directed by the evaluator, and be responsible to make payments directly to the lab as ordered. The standard order in this regard is that the parent requesting the testing shall pay the initial cost, with the cost reimbursed by the other party if the test is positive.

- (4) Unless otherwise ordered by the court, on approval of the Presiding Judge, all appointments of minor's counsel under Family Code section 3150 will be subject to the parties making arrangements for fees directly with the appointed counsel.
- (5) Private evaluations will be subject to fees and arrangements made directly to the evaluator, subject to allocation by the court. The court will generally order the party requesting the private evaluation to pay the portion of the fee that exceeds the one-half amount of the cost of an FCS evaluation.

c. Filing Rationale and Recommendation/Objections/Further Hearing

- (1) There will generally be no follow up hearing set if an assessment, evaluation, or minor's counsel is Ordered.
- (2) The evaluator (Merced County FCS or privately retained) or minor's counsel will be directed to prepare a report and recommendation and file it with the Court. This report will be submitted in two (2) parts. The first part will be the evaluator/minor's counsel rationale which will be maintained in a confidential envelope. The second will be the evaluator/minor's counsel's recommendation.
- (3) The parties and/or their attorney of record will receive only the evaluator's/minor's counsel recommendation. The confidential rationale or report shall be subject to the right of the parties to review it in the clerk's office. Counsel for the parties shall be given a copy, however they are ordered not to make additional copies and are responsible for maintaining control of the rationale or report, although they may review it with their client, unless pursuant to court order. The mediator or evaluator may

also prepare a separate report regarding confidential statements of the minor child or children, which report shall not be reviewed by counsel or parties without a court order. If the parties wish to obtain a copy of the rationale they must complete the Merced County local form set forth in Appendix B and submit same to the clerk's office. Upon the Judge's approval of release of the rationale the parties or their attorney may review the report and release same **only** to the extent ordered by the Judge.

- (4) Each party will have 20 days from the certification of mailing of the recommendation to file an objection to same. The parties shall use the Merced County local form set forth in Appendix C to set forth any objections they have to the recommendation. If no objection is timely filed by either party, the Court will adopt the recommendation as an Order of the Court.
- (5) If an objection is filed, the matter will be set on the Court's calendar by the Court Clerk and the parties or their attorney of record, will be notified of same by notice sent to them by the Clerk via United States mail to their last known address indicated in the court file.

d. Minor's Counsel

- (1) The appointment of counsel to represent children in Family Law cases is authorized by Family Code Section 3150.
- (2) After appointment Minor's counsel shall be notified and prepare orders which shall include the statement that Minor's counsel may directly contact the parties, represented or not.
- (3) No mediation shall be held after the appointment of Minor's counsel except on motion and approval of the court. After custody and visitation is decided upon a report by Minor's counsel, no further motions involving custody and/or visitation shall be held without approval of Minor's counsel. Any party, upon 10 days notice, may seek court approval to have the matter heard without Minor's counsel approval. The purpose of this rule is to encourage the parties to reach an agreement with Minor's counsel's assistance and without the need for a court hearing.

e. Disqualification of Mediator or Minor's Counsel/Conflict of Interest

(1) There is no peremptory challenge to a Mediator or Minor's counsel.

- (2) A Mediator/Minor's counsel can be disqualified for good cause. Any party wishing to challenge a Mediator or Minor's counsel for cause shall complete the Merced County local form set forth in Appendix D as soon as they first become aware of the conflict of interest or other cause which is the basis of the challenge. Same shall be submitted to the court for review and approval. Upon approval of any challenge the court will appoint an alternate Mediator or Minor's counsel for the matter.
- (3) All Family Court Services staff shall disclose any **known** actual or potential conflicts of interest at the first Mediation or meeting with the parties. These conflicts shall be resolved by the Court through the procedure indicated in Rule 109 J.2 herein above or the Mediator or Minor's counsel shall recuse him or herself before Mediation/Evaluation begins or before Mediation/Evaluation continues in the case where the conflict arises during the course of the Mediation/Evaluation.

f. Mediator's Motion

Upon meeting with the parties, the Mediator has the authority to make an ex-parte request to the court seeking:

- (1) temporary Orders for the protection of the child or children involved;
- (2) a more extensive evaluation/investigation be ordered or
- (3) release of records from Child Protective Services, law enforcement agencies, medical providers for the child or any and all other reports, records, or other tangible documents previously made relating to the issues of custody and visitation. Any Order made upon the Mediator's request shall be immediately served on the parties or their attorney by the clerk's office. Any party objecting to same may file an ex-parte Motion with the court seeking review and modification of any such Order made.

g. Child Advocate Motion

When the Child Advocate Program of Merced County has been appointed to supervise visits in a case, they shall have the authority to make an ex-parte request to the court seeking the termination of visits for a parent and/or the appointment of Minor's counsel for the child or children involved if they feel such a request is necessary for the protection of the child or children involved. Any Order made by the court upon such a request will be immediately served by the Clerk on the parties and/or their attorneys

notifying them of the action taken by the court. Any party objecting to same may file an ex-parte Motion with the court seeking review and modification of any such Order made. (*Effective July 1, 2004*).

RULE 410: EX PARTE ORDERS

- (A). Ex parte Order to Show Cause Motions shall be presented to the Clerk of Court no later than 11:30 a.m. on the day prior to the requested hearing.
- (B). No ex-parte hearing will be set unless the appropriate filing fee is paid at the time the request is made to place the matter on calendar.
- (C). No ex-parte hearing will be set unless the Merced local form titled "Declaration Re: Notice Upon Ex Parte Application for Orders" (a copy of which is set forth in Appendix "E") has been filed with the Clerk's Office.
- (D). Ordinarily, an ex parte order will not be issued unless one of the following conditions exists:
- (1) Notice was given to the adverse party by at least noon on the day preceding the hearing so that adverse party has an opportunity to oppose the application by counter declarations filed with the clerk as soon as possible or to appear at the time of the hearing; or
 - (2) Reasonable good faith efforts were made to notify the party; or
- (3) It clearly appears in the declaration that giving notice would frustrate the purpose of the proposed orders; or
- (4) The applicant would suffer immediate and irreparable injury before the adverse party could be heard in opposition; or
- (5) It appears by declaration that no significant burden or inconvenience will result to the adverse party.
- (E). An ex parte order will be issued only if the application is accompanied by a specific declaration adequate to support its issuance. Conclusions, feelings, wishes, or fears will not be adequate to support an ex parte order.
- (F). The moving party's papers will be presented to the Judge for signature at the time of the ex-parte hearing. If, as a result of the ex-parte hearing, a further hearing is

needed, the moving party shall pay another filing fee at the time the Order to Show Cause signed by the Judge at the ex-parte hearing is filed.

- (G). If a party to a dissolution or paternity action is seeking ex-parte orders as a result of domestic violence and there is currently a Dissolution or Paternity action in this county, said request shall be filed by means of a Domestic Violence Prevention Order to Show Cause and shall use the existing case number. This does not apply to Emergency Protective Orders (EPO) that are generated by law enforcement.
- (H). An application for an order seeking confirmation of sole custody for a party shall specify the duration and other circumstances justifying continued sole custody.
- (I). There is an absolute duty to disclose the fact that a requested ex parte order will result in a change of status quo. Failure to disclose or misrepresentation of the facts may result in an award of sanctions.

(Effective July 1, 2004).

RULE 411: ORDER EXCLUDING FROM HOME OR STAY AWAY

- (A). An application for an ex parte restraining order excluding either party from the family dwelling or the dwelling of the other, or a stay away order, causing the same result must be supported by a declaration showing:
 - (1) a right to possession of the home,
- (2) the danger of immediate and serious harm specifying in detail the time and place of any past act or acts of alleged misconduct as required by Family Code §6321,
 - (3) the availability of alternate housing for each party,
- (4) whether the residence involved is currently occupied by one or both parties and
- (5) if not occupied by one or both parties, contain a declaration as to when one or both parties left the residence and the reasons therefore.

If violence has taken place or seems likely, the Court encourages a spouse alleging such violence to leave the home until after a Court hearing may be held. The Court will not penalize a spouse for doing so.

(*Effective July 1, 2004*).

RULE 412: ORDER CHANGING CUSTODY OF MINOR

- (A). An application for ex parte order to immediately change the custody of any minor child(ren) must be supported by a declaration showing by clear, specific allegations that the health and welfare of the child(ren) requires immediate change of custody. The declaration shall also set forth, in brief, the circumstances in which the child would be placed pending the hearing.
- (B). The declaration shall also contain a statement of which party currently has actual physical custody of the child(ren) in question, how such physical custody was obtained and for how long the party has had such physical custody.

(Effective July 1, 2004).

RULE 413: EXCLUSIVE USE OF VEHICLES

An ex parte order granting exclusive use of a vehicle will not be granted unless the declaration demonstrates that the opposing party has suitable transportation available or requires no such transportation.

(Effective July 1, 2004).

RULE 414: MODIFIED ORDERS OR SET ASIDE OF EX PARTE ORDERS

If a responding party requests an ex parte order be set aside prior to the date set for hearing, notice shall be given to the moving party as provided in Local Rule 410. The Court may order an earlier hearing date or modify the orders on a proper showing in lieu of setting aside the orders.

(Effective July 1, 2004).

RULE 415: INCOME AND EXPENSE DECLARATION

(A). No case in which monetary relief of any kind is requested, including any request for child support, spousal support or attorney's fees and costs, shall be heard unless a current income and expense declaration (Judicial Council Form F-150) has been completed and filed by the moving and responding parties along with their moving and responding papers. The Income and Expense declaration filed shall be served on the opposing party with the moving or responding papers.

- (B). For purposes of this provision "current" means executed within 45 days of the date the matter is to be heard.
- (C). When the filed declaration requires no modification to correctly state the party's income and expense from the time a prior declaration was filed with the court and served on the other party, the party making this claim shall so state this in their moving or responding papers. If a party claims there has been no change since the last filing, they will attach to their moving or responding papers their last three pay stubs or other supporting financial information supporting their claim.
- (D). In the event that the moving party fails to comply with this rule, the matter may be dropped from calendar and the court may impose sanctions. The court may also impose sanctions if delay results from the failure of either party to comply with this rule.
- (E). The Income and Expense declaration shall be considered as received in evidence at the hearing subject to amendment and/or cross-examination at the time of hearing.
- (F). All blanks on the Income and Expense declaration must be answered. Notations such as "unknown", "estimate", "not applicable" or "none" should be used to avoid leaving any item blank. If current facts are temporary, both the actual current facts and the estimated prospective facts may be shown if properly identified.
- (G). Every Income and Expense declaration shall have attached to it supporting documentation to verify income claimed.
- (1) If a party claims wage income, he or she shall attach his or her last three pay stubs showing both current and year to date total income paid to the individual. If the party claims that part of his/her wages are from overtime they shall so indicate in an attachment to the declaration and further indicate the amount of regular pay received by them and the frequency and amount of overtime paid.
- (2) If a party claims income from sources other than wages they shall attach schedules establishing the other income earned in the year preceding the preparation of the declaration (i.e. business income and expense, commission income, bonus income, rental income and expense, interest income, etc.). Business expense schedules shall identify clearly any depreciation or other non-cash expenses deductible from income.

- (3) If a party is unemployed they shall attach a factual declaration stating when they were last employed, where they were last employed, gross and net income derived there from, reasons for termination and efforts to seek employment since their last job.
- (4) If a party is receiving Social Security income, Disability income, Unemployment compensation, Workman's compensation or other funds from any other entitlement program they shall so indicate in the declaration and attach to the Income and Expense form a copy of their most recent statement indicating the amount and expected duration of the entitlement income.

(Effective July 1, 2004).

RULE 416: GUIDELINES FOR SETTING CHILD AND SPOUSAL SUPPORT IN MERCED COUNTY

The following guideline for determining child and temporary spousal support and related issues have been adopted by the Merced Superior Court. It is not the court's intent that the guidelines duplicate California statutes or rules of court, or cover every anticipated question or concern, or be a research tool. Their purpose is to acquaint interested parties with the court's approach to various problems in this area of the law.

To the extent any approach suggested in these guidelines would be contrary to law in a given case, the court obviously will follow the law. Moreover, the Court will continue to exercise its independent discretion in all cases, and will depart from any approach discussed herein that would work an unnecessary hardship on any litigant. Family Law practice has been standardized to a large degree by the requirement that Judicial Council forms be used where applicable. Failure to use such forms when appropriate may result in the refusal of the Clerk to file a submitted document.

a. Determination of Net Disposable Income

Net disposable income shall be computed as required by FC Section 4059.

b. Minimum Wage Presumption

The court shall presume that a party has an ability to earn at minimum, a full-time minimum wage. Any party claiming an ability less then this presumption shall have the burden of proof to establish the lesser ability.

c. Overtime or Second Job Income

If a party has a full-time job (at least 40 hours per week) and in addition is earning supplemental income either through overtime with regular employment or through a second job, the court may exercise its discretion to discount the amount of gross income earned pursuant to the overtime or second job or order a percentage of the overtime earned to be paid as additional support. This is done to encourage the additional employment which benefits the supported child or children. Generally, if the court discounts overtime or second job earnings, it will use 50% of the average overtime or second job earnings in the prior year to determine support. The factors the Court may consider in exercising its discretion shall include:

- (i) Whether the overtime or second job worked is excessive;
- (ii) Whether the overtime worked is voluntary or an integral part of the party's regular employment;
 - (iii) The difficulty and nature of the employment;
 - (iv) The history of overtime or second job income;
- (v) A reduction in overtime or quitting the second job in order to spend more time with the children.

d. Hardship and other Deductions

A party may claim a hardship deduction pursuant to Family Code Section 4070 and 4071 to reduce the amount of income used to calculate support. Hardship deductions include, but are not limited to the minimum basic living expenses incurred by a party for children living in the party's home for whom the party is **legally** obligated to support. In calculating such a hardship, the court shall consider any and all support money received by the party claiming the hardship for the child living in their home and the time that child actually spends in the party's home.

The party claiming a hardship or other deduction shall have the burden of proving by a preponderance of the evidence, the legitimacy of the obligation, actual payments made and any other element of entitlement to the deduction.

e. Self-Employed Parties

The Court shall not presume that the amount or character of taxable income reported by a self-employed party for income tax purposes is an accurate reflection of gross income for purposes of computation of support, but shall consider any factors which show the actual cash flow available for personal living expenses.

f. Employment Benefits

The Court shall consider the fair rental or reasonable value of perquisite benefits (i.e. providing the employee with housing, vehicle, utilities, gas, insurance, cellular phone, etc.) paid for by an employer on behalf of the employee/party in determining gross income for purposes of calculating child or spousal support.

g. Income of Party Unknown

When a party's income is not known, a reasonable estimate of net income shall be used, based upon past employment, ability to earn, minimum wage or other such factors. For example, if a party, whose employment status is unknown, is healthy and able to work, an estimated gross income based upon minimum wage may be proper if that party has no earning history or no special skills, training or education.

h. Bonus Income

When a party is entitled to bonuses or similar such income, the amount of which is contingent or undetermined, the court may award support based in part upon a percentage of such payments. Generally the Court will order that the percentage of bonus income be paid when the income is received. The percentage will generally be determined by reference to the Bonus report calculated by one of the programs approved by the California Judicial Council for use by the Court in calculating child support.

i. Employment Related Travel Expenses

If a party is required to travel in excess of fifty (50) miles daily to go to and from work, they will be entitled to a deduction from income for purposes of calculating support to the extent that travel is not reimbursed by the employer. The deduction shall be determined by multiplying the number of miles exceeding fifty (50) that the party travels each day to go to and from work by the Internal Revenue Service allowable per

mile rate for car expense deductions (37 cents per mile as of 1/1/03). This amount shall be reduced by any dollar amount paid to the employee by their employer to defray this cost.

j. Computation of Child Support

- (1) The Court shall follow the State wide child support formula set forth in Family Code Section 4050 et. seq.. The court uses the California Guideline Child Support Calculator.
- (2) For purposes of determining the "time share" factor to be used in the formula, the court shall base the time share percentage on the **actual** visitation being exercised. A guideline for determining the time share factor is set forth in Appendix F.
- (3) In accordance with the provisions of the Family Law Code, the court shall use the net disposable income or earning capacities of the paying and receiving parents only and ignore the income of the new mate in establishing child support. New mate income can be considered for purposes of determining the tax effect it may have on the paying or receiving parent's income. It may also be considered in exceptional circumstances as allowed by the Family Law Code. The most common exception will be that situation where a parent ceases employment, or decreases the time of employment, because of income brought in from a new relationship. For example, if a person earning \$30,000 per year marries a person making enough money to support the household without the necessity of both parties working and the party making \$30,000 per year then quits their job, the court can consider the income that the party was making prior to quitting in calculating support.
- (4) The court may order the custodial parent to release the dependency exemption for one or more of the parties' minor children to the non-custodial parent. Generally, this will be done only when the release results in an increase in the combined net disposable incomes of the parties and benefits the child or children involved. When a release is ordered, the court shall adjust the amount of child support to reflect the tax benefit to the payor and detriment to the payee, and to assure that the payee suffers no decrease in their net disposable income after the payment of the adjusted support. The order for the release of an exemption shall be conditioned upon the payor's full

compliance with child support ordered during the tax year for which the dependency exemption is released.

(5) A parent who has been ordered to pay child support shall not reduce the amount of support by reason of a claimed credit or set-off owed by the payer to the payor, or a claimed violation of a visitation or other Order, without the express written consent of the other parent or Order of the court.

k. Health Care Insurance & Uninsured Health Care Expenses

- (1) If health insurance coverage is available through the employer of either parent at no or reasonable cost, the court may order one or both parties to carry the minor child or children on same. If health insurance coverage is unavailable at no or reasonable cost through the employer of either parent, the court may order either or both parents to obtain and pay for health insurance for their child or children.
- (2) The court will generally Order both parties to pay equally any and all uninsured medical, dental, prescription, orthodontic, vision, counseling or other health care costs incurred on behalf of the parties' child or children. The court has discretion, however, to apportion responsibility for such costs other than equally if to apportion such costs equally would be inequitable.

1. Travel Expense Incurred in Relation to Visitation

- (1) The responsibility for actually transporting the child or children for visitation will generally be assigned to the parent receiving custody of the child or children. This will usually result in the parties equally sharing responsibility for the cost of transportation associated with visitation or custodial time share.
- (2) If there is an out of pocket cost incurred in transporting the child or children for visits, such as air fare, the court will generally order both parties to pay one-half of the cost of same. The court may in its discretion, if it feels an equal division of the cost is inequitable, apportion responsibility for any such costs based upon the net spendable incomes of the parties after the payment of support.

m. Spousal Support

The court will use one of the computer programs approved by the Judicial Council of the State of California for purposes of calculating temporary Spousal support.

When determining permanent support payable the court will apply the factors set forth in Family Code Section 4320.

(Effective July 1, 2004).

n. Standard Orders

Unless otherwise ordered by the court, all support orders will be subject to the standard orders contained on Appendix G (attached).

RULE 417: CONTEMPT PROCEEDINGS

- (A). If a person cited for contempt appears without an attorney, one continuance normally will be granted to permit the cite to retain counsel.
 - (B). If the citee is found to be indigent, counsel shall be appointed.
- (C). The citee will be ordered to be present at the time and date set for the continued hearing, thus avoiding further service.

(Effective July 1, 2004).

RULE 418: COURT SECURITY; SEARCHES OF PERSONS AND PROPERTY

In order to maintain adequate physical security for court personnel, litigants and the public, the following procedures shall apply to all court facilities:

- (A). All persons entering the Courthouse or courtroom shall be subject to cursory search, including searches of purses, parcels and other carried items at any time deemed warranted by Court Security Personnel or as directed by a judge of the court. "Cursory search" includes the use of "pat down" searches, electronic metal detection and visual inspection of the contents of any purse, parcel or carried item.
- (B). All persons entering a courtroom shall be subject to detailed search, including searches of purses, parcels, or other carried items at any time authorized by the Judge of the subject courtroom. "Detailed search" shall include all of the means in the previous paragraph, plus such additional measures as may be deemed warranted by the authorizing Judge.
- (C). Conducting searches pursuant to this Rule, Court Security Personnel shall acknowledge the right of a person to decline a search of their person or property, on condition that they immediately leave the courthouse. Such right to leave without being searched shall not apply to searches incident to arrest or otherwise being taken into

custody, or any other circumstances authorized by law which permits searches without warrant. A person who refuses to submit to search and also refuses to leave the Courthouse may be subject to arrest for violation of PC Section 148 and 166(5).

- (D). Conducting searches as authorized by this Rule, Court Security Personnel, to the extent reasonably practicable, shall conduct the searches with discretion and out of the general view of the public and other court participants, including jurors. In exercising their discretion, Court Security Personnel may take into account such factors as the intrusiveness of the search, potential disruption of court proceedings, officer safety and the security needs of the court.
- (E). Notwithstanding any of the foregoing provisions, upon good cause shown, a Judge of the court may order any method of search of persons or property deemed necessary on a case by case basis to secure the safety of the courthouse, court personnel, litigants and the public.

(Effective July 1, 2004).

RULE 419: FIREARMS

Except as otherwise ordered or authorized by the court, no person, including correctional officers, governmental employees, deputy sheriffs, members of the Highway Patrol, or other law enforcement representatives, other than a sheriff or person specifically charged with the security of the court building, or as otherwise authorized by the judge, shall keep on his or her person firearms or other weapons while in the court building and shall not bring any weapon into the courtroom when the appearance is in a civil, family law or probate matter.

(Effective July 1, 2004).

RULE 420: TIME-SHARE

As a guideline in calculating time-share, the court will follow Appendix F for some typical time-share arraignments. The court will base time-share on the actual visitation that is exercised, rather than the order, where the parties have followed a

different schedule than the court order. In accordance with statutory guidelines, the court can also consider variation from the actual percentage of time where one of the parties is bearing a disproportionate share of the expenses related to the children.

(*Effective July 1, 2004*)

RULE 500: PROCEDURES FOR HANDLING COMPLAINTS ABOUT COURT-PROGRAM MEDIATORS

a. Application

The rules in this chapter establish the court's procedures for receiving, investigating, and resoling complaints about mediators in the court's mediation program for general civil cases, as required by rule 3.868 of the California Rules of Court.

Nothing in these rules should be interpreted in a manner inconsistent with the rules 3.865-3.862 of the California Rules of Court or as limiting the court's inherent or other authority, in its sole and absolute discretion, to determine who may be included on or removed from its list of mediators or who may be recommended, selected, appointed, or compensated as a mediator by the court. These rules also do not limit the court's authority to follow other procedures or take other actions to ensure the quality of mediators who serve in the court's mediation program in contexts other than when addressing a complaint. The failure to follow a requirement or procedure in these rules will not invalidate any action taken by the court in addressing a complaint.

b. Definitions

As used in this chapter:

- 1."The rules of conduct" means the Rules of Conduct for Mediators in Court-Connected

 Mediation Programs for Civil Cases set out in rules 3.850-3.860 of the California Rules

 of Court.
- 2. "Court –program mediator" means a mediator who:
 - (a) Has agreed to be included on the court's list or panel of mediators for general civil cases and is notified by the court or the parties that he or she has been selected to mediate a case within the court's mediation program; or
 - (b) <u>Has agreed to mediate a general civil case in the court's mediation</u>

 program after being notified by the court or the parties that he or she

 was recommended, selected, or appointed by the court or will be

 compensated by the court to mediate that case.
- 3. "Inquiry" means an unwritten communication presented to the court's complaint coordinator indicating that a mediator may have violated a provision of the rules of conduct.
- 4. "Complaint" means a written communication presented to the court's complaint coordinator indicating that a mediator may have violated a provision of the rules of conduct.
- 5. "Complainant" means the person who makes or presents a complaint.
- 6. "Complaint Coordinator" means the person designated by the presiding judge to receive complaints and inquiries about the conduct of mediators.

- 7. "Complaint proceeding" means all of the proceedings that take place as part of presenting, receiving, reviewing, responding to, investigating, and acting on any specific inquiry or complaint.
- 8. "Mediation communication" means any statement that is made or any writing that is prepared for the purpose of, in the course of, or pursuant to a mediation or a mediation consultation, as defined in Evidence Code section 1115, and includes any communications, negotiations, and settlement discussions between participants in the course of a mediation or a mediation consultation.

c. Confidentiality

- (a) Preserving the confidentiality of mediation communications

 All complaint proceedings will be conducted in a manner that preserves the confidentiality of mediation communications, including but not limited to the confidentiality of any communications between the mediator and individual mediation participants or subgroups of mediation participants.
- (b) Confidentiality of complaint proceedings

All complaint proceedings will occur in private and will be kept confidential. No information or records concerning the receipt, investigation, or resolution of an inquiry or a complaint will be open to the public or disclosed outside the course of the complaint proceeding except as provided in rule 3.871(d) of the California Rules of Court or as otherwise required by law.

d. Submission of inquiries and complaints to the complaint coordinator

All inquiries and complaints should be submitted or referred to the complaint

coordinator.

e. Addressing inquiries

If the complaint coordinator receives an inquiry, the coordinator must inform the person making the inquiry that the complaint procedure provides for investigation of written complaints only and that the person should submit a written complaint if he or she wants to the court to conduct an investigation or take action. If the person does not submit a complaint, the complaint coordinator may prepare a written summary of the inquiry.

f. Acknowledgement and preliminary review of complaints

(a) Acknowledgment of complaints

When the complaint coordinator receives a complaint, the coordinator will send the complainant a written acknowledgment of this receipt.

- (b) Preliminary review of complaints
- (1) The complaint coordinator will review each complaint to determine whether it warrants investigation or can be promptly, informally, and amicably resolved or closed.

 The coordinator may:
- (A) Informally contact the complainant to obtain clarification or additional information or to provide information that may address the complainant's concern.
- (B) Communicate informally with the mediator to obtain the mediator's perspectives.
- (2) If it appears to the complaint coordinator that the mediator may have violated a provision of the rules of conduct, the complaint coordinator must inform the mediator about the complaint and give the mediator an opportunity to provide an informal response.

- (3) The complaint coordinator may close a complaint without initiating an investigation if:
 - (A) The complaint is withdrawn by the complainant;
- (B) No violation of the rules of conduct appears to have occurred or the complaint is without sufficient merit to warrant an investigation;
- (C) The conduct alleged would constitute a very minor violation of the rules of conduct, the coordinator has discussed the complaint with the mediator, and the mediator has provided an acceptable explanation or response; or
- (D) The complainant, the mediator, and the complaint coordinator have agreed on a resolution to the complaint.

g. Appointing an investigator or a complaint committee

The presiding judge will appoint an investigator who has experience as a mediator and is familiar with the rules of conduct, or a complaint committee that includes at least one such individual, to investigate and make recommendations concerning any complaint that is not resolved or closed by the complaint coordinator as a result of the preliminary review.

h. Investigations

(a) Application

The procedures in this rule apply only if a complaint is not resolved or closed through the preliminary review or if the complaint coordinator initiates an investigation under (c).

(b) Referral of a complaint for investigation

If a complaint is not closed as a result of the preliminary review, the complaint coordinator will refer it to the investigator or complaint committee for investigation.

The complaint coordinator will provide the investigator or complaint committee with a summary of the preliminary review that includes:

- (1) A copy of the complaint;
- (2) A copy or summary of any response from the mediator;
- (3) A list of any violations of the rules of conduct that it appears may have occurred; and
- (4) <u>Copies of any previous complaints about the mediator and any written</u> summaries of inquiries that are relevant to the current complaint.
- (c) Initiation by the complaint coordinator

The complaint coordinator may initiate an investigation based on information received from any source, including an inquiry, indicating that a mediator may have violated a provision of the rules of conduct. To initiate the investigation, the complaint coordinator must refer the information received to an investigator or complaint committee with a list of the violations of the rules of conduct that is appears may have occurred.

- (d) Mediator's notice and opportunity to respond
- (1) The investigator or complaint committee must provide the mediator with a copy of the materials provided to the investigator or complaint committee by the complaint coordinator under (b) or (c).
- (2) The mediator will be given an opportunity to respond to the complaint and the list of apparent violations.

(e) Preparing report and recommendation

The investigator or complaint committee will conduct the investigation that the investigator or complaint committee considers appropriate. Thereafter, the investigator or complaint committee will prepare a written report that summarizes the investigation and states the investigator's or complaint committee's recommendation concerning the final decision on the complaint. The investigation or complaint committee may recommend one or more actions that are permissible under rule 3.870 of the California Rules of Court.

- (f) Informing mediator of recommendation

 The investigator or complaint committee may inform the mediator of its recommendation and inquire whether the mediator accepts that recommendation. If the mediator accepts the recommendation, the investigator's or complaint committee's report must indicate this.
- recommendation to the complaint coordinator. The complaint coordinator must promptly forward a copy of the report and recommendation to the presiding judge or to his or her designee.
 - (h) Final decision on a complaint that was investigated
 - (a) Responsibility for final decision

The presiding judge is responsible for making the final decision about the action to be taken on any complaint that was investigated or for designating another judicial officer or a committee that includes a judicial officer to perform this function.

(b) Acting on recommendation

- (1) Within 30 days after the investigator's or complaint committee's recommendation is forwarded to the presiding judge or the presiding judge's designee, the presiding judge or designee may submit to the complaint coordinator a decision:
 - (A) <u>Affirmatively adopting the investigator's or complaint committee's</u>
 recommendation as the final decision on the complaint; or
 - (B) <u>Directing a different action that is permissible under rule 3.870 of the</u>
 California Rules of Court.
- (2) If the presiding judge or his or her designee does not submit a decision within 30 days after the complaint committee's recommendation is forwarded, as provided in (1), the investigator's or complaint committee's recommendation will become the final decision on the complaint.
 - (c) Notification of final action

The complaint coordinator must promptly notify the complainant and the mediator in writing of the final action taken by the court on the complaint.

(d) Authorized disclosures

After the decision on a complaint, the presiding judge, or a person whom the presiding judge designates to do so, may authorize the public disclosure of information or records concerning the complaint proceeding that do not reveal any mediation communications.

The disclosures that may be authorized under this subdivision include the name of a mediator against whom action has been taken, the action taken, and the general basis on which the action was taken. In determining whether to authorize the disclosure of information or records under this subdivision, the presiding judge or designee should

consider the purposes of the confidentiality of complaint proceedings stated in rule 3.871 of the California Rules of Court.

(i) Interim suspension pending a final decision on a complaint

If the preliminary review or the investigation indicates that a mediator may pose a threat

of harm to mediation participants or to the integrity of the court's mediation program, the

presiding judge or the other judicial officer or committee designated by the presiding

judge to make the final decision about the action to be taken on any complaint may

suspend the mediator from the court's panel or list pending final decision on the

complaint. The complaint coordinator may make a recommendation to the presiding

judge or the designee regarding such a suspension.

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When the Protected Persons Include Minor Children of the Restrained Person	31
When the Victim is Present in the Criminal Court	31
Where the Restrained and Protected Persons have Children Together	30
Withdrawal of Funds	57
Withdrawal of Stipulation to Commissioner	35
Writ of Habeas Corpus	35

LIST OF EFFECTIVE DATES OF RULES

Rule 1	Effective January 1, 2010
Rule 1.2	Effective July 1, 2004
Rule 1.3	Effective July 1, 2004
Rule 1.4	Effective July 1, 2004
Rule 1.5	Effective July 1, 2004
Rule 1.6	Effective January 1, 2009 (Repealed, January 1, 2010)
Rule 1.8	Effective July 1, 2004
Rule 2	Effective July 1, 2004
Rule 3	Effective July 1, 2004
Rule 3.1	Effective July 1, 2004
Rule 3.2	Effective July 1, 2004
Rule 4	Effective July 1, 2004
Rule 5	Effective July 1, 2004
Rule 6	Effective July 1, 2004
Rule 7	Effective July 1, 2004
Rule 8	Effective July 1, 2004
Rule 8.1	Effective July 1, 2004
Rule 9	Effective July 1, 2004
Rule 10	Effective July 1, 2004
Rule 13	Effective July 1, 2004
Rule 14	Effective January 1, 2009
Rule 15	Effective July 1, 2004
Rule 16	Effective January 1, 2010

LIST OF EFFECTIVE DATES OF RULES

Rule 17	Effective July 1, 2004
Rule 18	Effective July 1, 2004
Rule 19	Effective July 1, 2004
Rule 21	Effective July 1, 2004
Rule 21(c)	Effective January 1, 2006
Rule 200	Effective July 1, 2004
Rule 201	Effective January 1, 2009
Rule 300	Effective July 1, 2004
Rule 401	Effective July 1, 2004
Rule 402	Effective July 1, 2004
Rule 403	Effective July 1, 2004
Rule 404	Effective July 1, 2004
Rule 405	Effective July 1, 2004
Rule 406	Effective July 1, 2004
Rule 407	Effective July 1, 2004
Rule 407.1	Effective July 1, 2004
Rule 408	Effective July 1, 2004
Rule 409	Effective July 1, 2004
Rule 410	Effective July 1, 2004
Rule 411	Effective July 1, 2004
Rule 412	Effective July 1, 2004
Rule 413	Effective July 1, 2004
Rule 414	Effective July 1, 2004

LIST OF EFFECTIVE DATES OF RULES

Rule 415	Effective July 1, 2004
Rule 416	Effective July 1, 2004
Rule 417	Effective July 1, 2004
Rule 418	Effective July 1, 2004
Rule 419	Effective July 1, 2004
Rule 420	Effective July 1, 2004
Rule 500	Effective January 1, 2010

Appendix A – Waiver of Orientation

Appendix A – Waiver of Orientation

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MERCED FAMILY COURT SERVICES FORMAL REQUEST FOR: WAIVER OF ORIENTATION HEARING CASE NAME: ____ CASE NUMBER: Request for Waiver of Orientation Hearing Date for Orientation Hearing as currently set by the Court: _ , submit this written request for the Court's approval for waiver of orientation with the request to be submitted to the Clerk's Office no later than 4PM the day prior to your scheduled date of Orientation Hearing. This request is made for the following reason: Party lives over 250 miles away Address: Party has been to orientation within the last 18 months. Date last attended: Telephone Number to confirm waiver of Orientation Hearing Telephone Number including area code Date: Signature of Party FORMAL REQUEST FOR: TELEPHONIC MEDIATION Request to Participate by Telephone for Mediation I, _______, submit this written request for the Court's approval to conduct the currently scheduled Mediation. I understand that if granted, Mediation shall be conducted by the Mediator and I shall be advised of the possible Six (6) hour period in which the Mediator shall be able to contact me. The telephone number provided below is the number that I can be reached at throughout that time period. I am requested to participate by telephone for Mediation for the following reasons:_ III. Telephone Number of Party Requesting to Appear Telephonically _____, submit that this is a true and correct telephone number of where I can be reached for the purpose of Court contact and Mediation:__ Telephone Number including area code Signature of Party If Orientation Hearing is waived, it is the party's responsibility to contact the Court office to find out the date and time for Mediation and Further Hearing by contacting the Clerk's Office at (209) 725-4117. Based on the above statement, the request for: Telephonic Mediation Waiver of Orientation is/are hereby: GRANTED DENIED Judge of the Superior Court Gave party info/Left msg for party OR Gave copy to party/attorney: ___ (Court Clerk's Inintals) 4/09 AAV

Appendix B – (page 1of 2)

Appendix B – Ex-Parte Application for Release

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):	FOR COURT USE ONLY
	ome can obbes
TELEPHONE NO.: FAX NO.:	
E-MAIL ADDRESS:	
ATTORNEY FOR (Name):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF MERCED	
STREET ADDRESS: 2260 "N" Street	
MAILING ADDRESS: 627 West 21st Street	1 32/2 (1-2) (2/3) (2/3)
CITY AND ZIP CODE: MERCED, CALIFORNIA 95340	
BRANCH NAME:	
PETITIONER:	CDD SCARCE F
DECDONDENT.	
RESPONDENT:	
EV DADTE ADDUCATION FOR DELEACE OF MEDIATORIC DATIONALE OR	CASE NUMBER:
EX-PARTE APPLICATION FOR RELEASE OF MEDIATOR'S RATIONALE OR EVALUATOR'S RATIONALE/REPORT OR MINORS COUNSEL REPORT	20,70,30,101,00
AND ORDER THEREON	
APPLICATION and DECLARATION	
■ MEDIATOR'S RATIONALE OR ■ EVALUATOR'S RATIONALE/REPORT OF	OR I MINORS COUNSEL REPORT
PETITIONER RESPONDENT REQUESTS release of the Rationale or Repor	t for the Recommendation filed on the following
	or me to understand the recommendation.
, , ,	
declare under penalty of perjury that the foregoing is true.	
additional partially of partial and the agency of the agen	
Date:	
DECLARANT'S NAME (PRINT)	SIGNATURE OF DECLARANT
DECEMBER (FINAL)	
(C	
(Continued on reverse) EX-PARTE APPLICATION FOR RELEASE OF EVALUATOR'S I	ATIONAL E AND ODDES

Appendix B – (page 2of 2)

ORDER

GOOD CAUSE APPEARING THEREFOR IT IS ORDERED:	
lacktriangled THE REQUEST IS DENIED. THE CLERK SHALL SET THE MATTER FOR HEARING AND NOTIFY THE PARTIES:	
THE RATIONALE SHALL BE RELEASED WITHOUT RESTRICTION, OTHER THAN THOSE SET FORTH BELOW.	
THE RATIONALE SHALL BE EXAMINED BY THE PARTIES OR ATTORNEYS FOR THE PARTIES IN THE CLERK'S	OFFICE.
THE RATIONALE SHALL BE RELEASED TO THE ATTORNEYS FOR THE PARTIES WHO SHALL NOT MAKE ANY BUT MAY REVIEW THE CONTENTS THEREOF WITH THE PARTIES.	COPIES OF IT,
THE RATIONALE SHALL BE RELEASED TO THE PARTIES WITHOUT RESTRICTION AFTER THE COURT HAS R PARTS WHICH IT DEEMS SENSITIVE OR HAVING THE POSSIBILITY OF CREATING FURTHER CONFLICT.	EDACTED
THE RATIONALE SHALL BE RELEASED WITH THE FOLLOWING CONDITIONS:	
NOTICE	
 IN ALL CASES THE INFORMATION AND REPORTS ARE CONFIDENTIAL AND MAY BE REVIEWED ONLY BY THE PARTIES AND THEIR ATTORNEYS. 	
•	
 NO COPIES OF THE REPORT SHALL BE PUBLISHED OR OTHERWISE DISTRIBUTED. 	
•	
THIS IS A COURT ORDER AND IS SUBJECT TO ENFORCEMENT BY CRIMINAL PROCEEDINGS OR CIVIL CONTEMPT.	
DATE: JUDGE OF THE SUPERIOR COURT	
MER-0004 MNG Rev. 04/02/2007 EX-PARTE APPLICATION FOR RELEASE OF EVALUATOR'S RATIONALE AND ORDER	Page two

Appendix C – (page 1of 2)

Appendix C – Objection to Recommended Order

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): FOR COURT USE ONLY TELEPHONE NO: ATTORNEY FOR (Name): NAME OF COURT: Merced Superior STREET ADDRESS: 2260 "N" Street MAILING ADDRESS: 627 West 21st Street CITY AND ZIP CODE: Merced, California 95340 BRANCH NAME: Family Law PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: PETITIONER'S RESPONDENTS CASE NUMBER: CASE NUMBER:			
ATTORNEY FOR (Name): NAME OF COURT: Merced Superior STREET ADDRESS: 2260 "N" Street MAILING ADDRESS: 627 West 21st Street CITY AND ZIP CODE: Merced, California 95340 BRANCH NAME: Family Law PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: PETITIONER'S RESPONDENT'S CASE NUMBER: OBJECTIONS TO FAMILY COURT SERVICES EVALUATION FAMILY COURT SERVICES ASSESSMENT	ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar r	number, and address) :	FOR COURT USE ONLY
ATTORNEY FOR (Name): NAME OF COURT: Merced Superior STREET ADDRESS: 2260 "N" Street MAILING ADDRESS: 627 West 21st Street CITY AND ZIP CODE: Merced, California 95340 BRANCH NAME: Family Law PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: PETITIONER'S RESPONDENT'S CASE NUMBER: OBJECTIONS TO FAMILY COURT SERVICES EVALUATION FAMILY COURT SERVICES ASSESSMENT	_		
ATTORNEY FOR (Name): NAME OF COURT: Merced Superior STREET ADDRESS: 2260 "N" Street MAILING ADDRESS: 627 West 21st Street CITY AND ZIP CODE: Merced, California 95340 BRANCH NAME: Family Law PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: PETITIONER'S RESPONDENT'S CASE NUMBER: OBJECTIONS TO FAMILY COURT SERVICES EVALUATION FAMILY COURT SERVICES ASSESSMENT			
ATTORNEY FOR (Name): NAME OF COURT: Merced Superior STREET ADDRESS: 2260 "N" Street MAILING ADDRESS: 627 West 21st Street CITY AND ZIP CODE: Merced, California 95340 BRANCH NAME: Family Law PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: PETITIONER'S RESPONDENT'S CASE NUMBER: OBJECTIONS TO FAMILY COURT SERVICES EVALUATION FAMILY COURT SERVICES ASSESSMENT			
ATTORNEY FOR (Name): NAME OF COURT: Merced Superior STREET ADDRESS: 2260 "N" Street MAILING ADDRESS: 627 West 21st Street CITY AND ZIP CODE: Merced, California 95340 BRANCH NAME: Family Law PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: PETITIONER'S RESPONDENT'S CASE NUMBER: OBJECTIONS TO FAMILY COURT SERVICES EVALUATION FAMILY COURT SERVICES ASSESSMENT			
ATTORNEY FOR (Name): NAME OF COURT: Merced Superior STREET ADDRESS: 2260 "N" Street MAILING ADDRESS: 627 West 21st Street CITY AND ZIP CODE: Merced, California 95340 BRANCH NAME: Family Law PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: PETITIONER'S RESPONDENT'S CASE NUMBER: OBJECTIONS TO FAMILY COURT SERVICES EVALUATION FAMILY COURT SERVICES ASSESSMENT			
NAME OF COURT: Merced Superior STREET ADDRESS: 2260 "N" Street MAILING ADDRESS: 627 West 21st Street CITY AND ZIP CODE: Merced, California 95340 BRANCH NAME: Family Law PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: PETITIONER'S RESPONDENT'S CASE NUMBER: OBJECTIONS TO FAMILY COURT SERVICES EVALUATION FAMILY COURT SERVICES ASSESSMENT	TELEPHONE NO.:	FAX NO.(Optional):	
STREET ADDRESS: 2260 "N" Street MAILING ADDRESS: 627 West 21st Street CITY AND ZIP CODE: Merced, California 95340 BRANCH NAME: Family Law PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: PETITIONER'S RESPONDENT'S CASE NUMBER: OBJECTIONS TO FAMILY COURT SERVICES EVALUATION FAMILY COURT SERVICES ASSESSMENT	ATTORNEY FOR (Name):		~
STREET ADDRESS: 2260 "N" Street MAILING ADDRESS: 627 West 21st Street CITY AND ZIP CODE: Merced, California 95340 BRANCH NAME: Family Law PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: PETITIONER'S RESPONDENT'S CASE NUMBER: OBJECTIONS TO FAMILY COURT SERVICES EVALUATION FAMILY COURT SERVICES ASSESSMENT	NAME OF COURT: Merced Superior		
MAILING ADDRESS: 627 West 21st Street CITY AND ZIP CODE: Merced, California 95340 BRANCH NAME: Family Law PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: PETITIONER'S RESPONDENT'S CASE NUMBER: OBJECTIONS TO FAMILY COURT SERVICES EVALUATION FAMILY COURT SERVICES ASSESSMENT	The state of the s		
CITY AND ZIP CODE: Merced, California 95340 BRANCH NAME: Family Law PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: PETITIONER'S RESPONDENT'S CASE NUMBER: OBJECTIONS TO FAMILY COURT SERVICES EVALUATION FAMILY COURT SERVICES ASSESSMENT	STREET ADDRESS: 2260 "N" Street		*
BRANCH NAME: Family Law PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: PETITIONER'S RESPONDENT'S CASE NUMBER: OBJECTIONS TO FAMILY COURT SERVICES EVALUATION FAMILY COURT SERVICES ASSESSMENT	MAILING ADDRESS: 627 West 21st Street		
BRANCH NAME: Family Law PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: PETITIONER'S RESPONDENT'S CASE NUMBER: OBJECTIONS TO FAMILY COURT SERVICES EVALUATION FAMILY COURT SERVICES ASSESSMENT			
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: PETITIONER'S RESPONDENT'S OBJECTIONS TO SAMILY COURT SERVICES EVALUATION FAMILY COURT SERVICES ASSESSMENT CASE NUMBER:	CITY AND ZIP CODE: Merced, California 95340		
DEFENDANT/RESPONDENT: PETITIONER'S RESPONDENT'S OBJECTIONS TO FAMILY COURT SERVICES EVALUATION FAMILY COURT SERVICES ASSESSMENT	BRANCH NAME: Family Law		
PETITIONER'S RESPONDENT'S DOBJECTIONS TO FAMILY COURT SERVICES EVALUATION FAMILY COURT SERVICES ASSESSMENT	PLAINTIFF/PETITIONER:		
PETITIONER'S RESPONDENT'S DOBJECTIONS TO FAMILY COURT SERVICES EVALUATION FAMILY COURT SERVICES ASSESSMENT			
PETITIONER'S RESPONDENT'S DOBJECTIONS TO FAMILY COURT SERVICES EVALUATION FAMILY COURT SERVICES ASSESSMENT	DEEENDANT/DESPONDENT:		
PETITIONER'S COBJECTIONS TO FAMILY COURT SERVICES EVALUATION FAMILY COURT SERVICES ASSESSMENT	DEI ENDANTINESI SINDENT.		
PETITIONER'S COBJECTIONS TO FAMILY COURT SERVICES EVALUATION FAMILY COURT SERVICES ASSESSMENT	,		
OBJECTIONS TO FAMILY COURT SERVICES EVALUATION FAMILY COURT SERVICES ASSESSMENT	PETITIONER'S	RESPONDENT'S	CASE NUMBER:
☐ FAMILY COURT SERVICES EVALUATION ☐ FAMILY COURT SERVICES ASSESSMENT		_	
FAMILY COURT SERVICES ASSESSMENT		TION	
MINOR'S COUNSEL'S RECOMMENDATION			
	MINOR'S COUNSEL'S RECOMMENDA	ATION	1

THE ABOVE PARTY OBJECTS TO THE FOLLOWING PROVISIONS OF THE RECOMMENDED ORDER:

FACTS SUPPORTING OBJECTIONS:

Appendix C – (page 2of 2)

PLAINTIFF/PETITIONER:		CASE NUMBER:	
EFENDANT/RESPONDENT:			
			,
clare under penalty of perjury under the laws of the State of Ca	lifornia that the foregoing is	s true and correct.	
e:			
	_ •		
(TYPE OR PRINT NAME)	Petitioner/Plaintiff:	(SIGNATURE OF DECLARANT) Respondent/Defendant	Attorney
	Other (specify):	KespondenivDelendant	Allorney

Appendix D – (page 1of 2)

Appendix D – Ex-Parte Request-Disqualification

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):	FOR COURT USE ONLY
ATTORNET OF PARTY WITHOUT ATTORNET (Waine, state bar holinder, and address).	FOR COURT USE ONLY
TELEPHONE NO.: FAX NO.(Optional):	3003 903
E-MAIL ADDRESS (Optional):	1 0 0 0 0 0 1
ATTORNEY FOR (Name):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF MERCED	
STREET ADDRESS: 2260 "N" Street	. We ask nated
MAILING ADDRESS: 627 West 21st Street	Logo?
CITY AND ZIP CODE: MERCED, CALIFORNIA 95340 BRANCH NAME: FAMILY LAW FACILITY	
PETITIONER:	
RESPONDENT:	
	nO.
CLAIMANT:	
EX-PARTE REQUEST AND ORDER RE: DISQUALIFICATION OF	CASE NUMBER:
MEDIATOR OR EVALUATOR	
1) I am the Petitioner Respondent Other	in the action herein.
and the Market M	at a see Freehood as to the second and a second
 I move to disqualify to act as Medi the following reasons: 	ator or Evaluator in the matter herein for
a) Conflict of Interest. Please state all facts which support this claim. You may a	attach additional pages as needed.
b) Other. Please state all facts which support this claim. You may attach addition	nal pages as needed.
Dated:	PETITIONER/RESPONDENT/OTHER
	3.0
EV DARTE DECLIEST AND OPDED DE DISCULA	IEICATION OF

Appendix D – (page 2of 2)

	Order
The Court hereby:	
Denies the Order requested: Grants the Order requested:	
It is so ordered.	
Dated:	JUDGE/COMMISSIONER OF THE SUPERIOR COURT
	PROOF OF SERVICE BY MAIL
On Mediator or Evaluator by depositing a copy thereon the following parties and/or their attorney of recor	I served the above Ex-Parte Request and Order Re: Disqualification of notosed in a sealed envelope, with postage prepaid, in the United States mail to the following addresses:
At the time of service, I was at least 18 years of a My address is:	and not a party to the action.
I declare under penalty of perjury under the laws is executed on	ne State of California that the foregoing is true and correct and this declaration , at , California.
MER-0015 Rev. 04/02/2007 EX-PAR 7	REQUEST AND ORDER RE: DISQUALIFICATION OF

Page | 106

Appendix E

Appendix E – Declaration in Support of Ex-Parte Application

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):	FOR COURT USE ONLY
TELEPHONE NO.: () - FAX NO.: () -	
E-MAIL ADDRESS:	
ATTORNEY FOR (Name):	4
SUPERIOR COURT OF CALIFORNIA, COUNTY OF MERCED	
STREET ADDRESS: 2260 "N" Street	
MAILING ADDRESS: 627 West 21st Street	
CITY AND ZIP CODE: MERCED, CALIFORNIA 95340	
BRANCH NAME: FAMILY LAW Division PETITIONER:	-
RESPONDENT:	
CLAIMANT/OTHER PARENT:	
DECLARATION IN SUPPORT OF EX PARTE APPLICATION FOR ORDERS	FSD NUMBER: CASE NUMBER:
I, the undersigned declare:	
1. I am (choose one)	
attorney for Petitioner attorney for Respondent	attorney for child(ren)
self-represented Petitioner self-represented Respondent	self-represented Other Parent
 other (explain) The opposing party is represented by an attorney: Yes No 	
(If you checked "Yes", fill in attorney's name, address and telephone number. I	f you checked "No." fill in the other
party's name, address, and telephone number.)	, ,
Party/Attorney Name	
Address/Telephone number:	
3. OTHER CASES	* · · · · · · · · · · · · · · · · · · ·
The parties to this action have been involved in another Family, Probate or	Juvenile Court case. (If there has
been another case, fill in the case number and court name.) A previous request for the same relief was denied. (Give details)	
4. NOTICE	
A. I HAVE given notice of this ex parte application to the other party and/or their a	ttorney by the following method:
personal delivery overnight carrier Fax Telephone	Other (explain):
Date and time of notice	
I have received confirmation that the other party has received my papers a	s follows (check one)
In person/telephone (describe)	
Confirmation of receipt.B. I HAVE NOT given notice of the present application for ex parte orders because	Check all that apply You must explain
below):	consolitati apply. For must explain
This is an application for Domestic Violence Prevention Act (DVPA) restrain	ining orders.
Great or irreparable injury will result to me before the matter can be heard	
The other party agrees to the orders requested	
No significant burden or inconvenience to the responding party will result	from the orders requested.
It is impossible to give notice. (Explain)	
Other C. Explanation:	
A hearing between the parties is already set. I am asking that this motion to	pe heard at the same time.
I am unable to serve the other party 21 days before the hearing.	
I fear for my physical safety (and that of my children, if applicable).	
Other	
I declare under penalty of perjury under the laws of the State of California that the fore	going is true and correct, at Merced,
California, Date:	
DOINT MANG OF RECLADANT	SIGNATURE OF DECLARANT
PRINT NAME OF DECLARANT	SIGNATIONE OF DECEARANT

Appendix F – (page 1 of 2)

Appendix F – Determining the Visitation Percentage

have with your child/ren. To ca	se Declaration (Item #2) will ask you f iculate that figure, use a calendar to d Enter that amount in the last column	or the percentage of custody/visitation you etermine the number of days each month that on the applicable line for each month.
MONTH	DAYS IN THE MONTH	DAYS IN THE MONTH THAT YOU HAD THE CHILD/REN
January	31	
February	28 - 29	
March	31	
April	30	
May	31	
June	30	
July	31	
August	31	
September	30	
October	31	
November	.30	
December	31	
TOTALS	365 - 366	
number of days that you had to	divided by 365 or 366 = tion percentage based on a period that the child/ren in that period by the total divided by == A DISCREPANCY BETWEEN THE F PARENT, PLEASE BE PREPARED T TAGE OF VISITATION YOU ARE O	O SHOW DOCUMENTATION TO
THE BACK OF THIS FORM I ARRANGEMENTS. IF YOUR THE SCHEDULE, THE VISIT	VISITATION ARRANGEMENT MA ATION PERCENTAGE WILL ALRE	TCHES ONE OF THOSE LISTED ON
THE BACK OF THIS FORM I	VISITATION ARRANGEMENT MA ATION PERCENTAGE WILL ALRE	TCHES ONE OF THOSE LISTED ON ADY BE CALCULATED FOR YOU
THE BACK OF THIS FORM I ARRANGEMENTS. IF YOUR THE SCHEDULE, THE VISIT IN THE LAST COLUMN.	VISITATION ARRANGEMENT MA	TCHES ONE OF THOSE LISTED ON

Appendix F – (page 2 of 2)

SCHEDULE OF MOST COMMON VISITATION ARRANGEMENTS

VISITATION ARRANGEMENT	EQUIVALENT DAYS OF VISITATION IN THE YEAR	VISITATION PERCENTAGE
weekend per month	26	7.1
long weekend per month	38	10.4
weekends per month	49	13.4
night per week	52	14.2
Alternate weekends	55	15.1
Alternate weekends + 1/2 month in the summer	67	18.4
Alternate weekends + alternate holidays + 1/2 month in the summer	73	20.0
2 long weekends per month	75	20.1
Alternate weekends + alternate holidays + 1 month in the summer	85	22.2
1 weekend per month + 1 night per week	90	24.7
Alternate weekends + alternate holidays + 1/2 month in the summer	94	25.8
2 days per week	104	28.5
Alternate weekends + 1 evening per week + alternate holidays plus 1 month in the summer	111	30.4
All no-school time	112	30.7
Alternate weekends + 1 evening per week + 1/2 no-school time	125	34.2
Alternate weekends + 1 night per week + alternate holidays + 1 month in the summer	137	37.5
Alternate weekends + 1 night per week + 1/2 no-school time	151	41.4
Alternate weekends + 1 evening per week + all summer	153	41.9
3 days per week	156	42.7
Alternate weekends + 1 night per week + all summer	179	49.0
Alternate 3 days/4days	182	50.0
DEFINITIONS:		- 10

Weekend (2 days) = 5-7 PM Friday to 5-7 PM Sunday (or to 5-7 on major holiday Mondays)

Long weekend (3 days) = After school Friday to beginning of next school day.

One evening per week (1/2 day) = After school r riody to beginning of next school day.

One night per week (1/2 day) = After school to after dinner.

One night per week (1 day) = After school and overnight.

Holidays (12 days per year) = New Year's, President's, Memorial, Mother's or Father's Day, Independence, Labor, Veteran's, Thanksgiving (2), Christmas and birthdays of child and non-custodial parent.

Summer (84 days per year) = Tweelve weeks from 2nd week in June through next to last week in August.

No-school time = Time child is not in school.

Appendix F

Page 2 of 2

Appendix G

Appendix G - Standard Orders Attachment

STANDARD ORDERS ATTACHMENT

(TO ORDER RE: CHILD SUPPORT)

THE FOLLOWING IS MADE A PART OF THE COURT'S ORDER:

 All payments must be made to: MERCED COUNTY DEPARTMENT OF CHILD SUPPORT SERVICES P.O. BOX 3199 MERCED, CA 95344

- Child support payments are payable by Order/Notice to Withhold income for Child Support (form FL-195).
 An Order/Notice to Withhold Income for Child Support (form FL-195) will issue.
- The non-custodial parent/obligor must (a) provide and maintain health insurance coverage for the children
 as obligated by law; (b) within 20 days of the Merced County Department of Child Support Services request.
 complete and return a Health insurance Form. Each party is responsible for one-half (1/2) of all medically
 necessary uninsured medical costs. A Health Insurance Coverage Assignment (form FL-470) will issue.
- 4. No prevision of this judgment/order may operate to limit any right to collect the principal (total amount of unpaid support) or to charge and collect interest and penalties as allowed by law. Interest will accrue on the entire principal balance owing and not on each installment as it becomes due. All payments ordered are subject to modification.
- The non-custodial parent/obligor must notify the Merced County Department of Child Support Services within 5 days in writing of any change in residence, income, or employment.
- The non-custodial parent/obligor is responsible for paying all child support and reimbursement payment obligations as of the effective date of the order and shall be responsible for making voluntary payments during any period of time when payments are not being made by an Order/Notice to Withhold Income for Child Support.
- 7. Current child support shall be modified and set at \$0.00 per month starting on the 1st day of the month following the incarceration of an obligor, if that incarceration is for 30 or more days consecutive. Current child support shall resume as previously set by court order on the 1st day of the 2st month after the obligor's release from incarceration.
- 8. Current child support shall be modified and set at \$0.00 per month starting on the 1st day of the month following the entrance of an obligor into a live-in drug or alcohol treatment program that lasts for at least 30 days consecutively and which prevents obligor from earning income other than that which is paid to the program as a term of that program. This reduction shall only apply if obligor successfully completes the treatment program. Current child support shall resume as previously set by court order on the 1st day of the 2st month after obligor's leaving the live-in program.
- The Court reserves jurisdiction to retroactively modify and set child support for any periods that obligor is incarcerated or in a live-in program if the Court determines that while incarcerated or while in the live-in program the obligor had an ability to pay current child support.

NOTICE: Any party required to pay child support must pay interest on eventue amounts at the "legal" rate, which is currently 10 percent.

Xx 5004 100700

Appendix H (page 1 of 3)

Appendix H – Electronic Exhibits

Uniform Instructions for Presentation of Electronic Exhibits

The Merced Superior Court will not provide technical assistance for the prosecution, defense in criminal matters, or counsel in civil matters with the presentation, playback, review or submission of electronic exhibits and/or electronic evidence at any hearing, court trial, or jury trial. Electronic exhibits include, but are not limited to VHS videotapes, DVD's, power point presentations, audio tapes and digital images.

Electronic exhibits presented in court shall conform to the following standards:

- 1. Electronic exhibits presented as evidence shall contain only the content that is to be viewed and heard by the judicial officer and the jury.
- 2. In an effort to protect both the prosecution and defense in criminal cases and counsel in civil cases, the court will not provide an IT staff member to playback and/or review electronic exhibits.
- 3. Static digital images, such as photographs and power point style presentations must be submitted in both electronic and printed format. Other types of media must be submitted in a format compatible with those authorized by the court. A list of compatible formats is maintained on the court website and listed below.
- 4. Any equipment required to view and/or listen to electronic exhibits including laptops, projectors, DVD/CD players is the responsibility of the party who presents the evidence.
- 5. Some audio-video presentation equipment may be available through the court upon request, provided the court receives the Audio-Video Request Form two (2) court days prior to the scheduled court date and time. The form (sample below) and a list of available audio-video equipment are on the court website www.merced.courts.ca.gov.

Appendix H (page 2 of 3)

Cassette Tapes

1. standard audio cassette tape

CD-ROM/CD-R/CD-RW

- 1. music CD
- 2. video CD format
- 3. MP3 audio tracks and JPEG image files of format conforming to ISO 9660 Level 1/Level 2, or its extended format, Joliet
- 4. KODAK Picture CD format

DVD-ROM/DVD+RW/DVD+R/DVD-RW/DVD-R*

- 1. MP3 audio tracks and JPEG image files of format conforming to ISO 9660 Level 1/Level 2, or its extended format, Joliet
- 2. S8 cm DVD+RW, DVD-RW, and DVD-R recorded with a DVD Video camera
 - * Following formats are not acceptable:
 - a. Formats not listed above.
 - b. PHOTO CD format
 - c. Data part of CD-Extras
 - d. DVD Audios
 - e. HD layer on Super Audio CD's
 - f. DVD-RAM's
 - g. DVD VIDEO's with a different region code
 - h. A disc recorded in a color system other than NTSC
 - i. A non-standard shaped disc (e.g. card, heart)

Documents

- 1. PDF-A
- 2. Microsoft Office compatible format

Images

- 1. JPEG
- 2. GIF
- 3. PNG
- 4. TIFF

Appendix H (page 3 of 3)

FOR COURT IT PURPOSES ONLY, NOT TO BE PLACED IN COURT FILE

COURT AUDIO-VIDEO EQUIPMENT REQUEST FORM



Schedu	ling Info	rmation	
Date:		Time:	Location:
Contac	t Informa	ation	
Name			
Organiz	ation		
Work Ph	none		
Cell Pho	ne		
E-Mail A	ddress		
Reques	ted Equi	pment	
	Audio-	Video Cart (DV	D/VCR Player with LCD TV)
	CD/Cas	sette Player (p	ortable)
	DVD PI	ayer	
Comme	nte		
Commi	iits		
Signatu	ıre		
Changes	s to schedu		must be complete and submitted at least 2 court days in advance. requested equipment requires the submission of an amended form duled date.
Name (orinted)		
Signatu	re		
Date			

Appendix I (page 1 of 5)

Appendix I – Stipulated Discovery Order

1	FILED MERCED COUNTY
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9	IN THE SUPERIOR COURT
10	COUNTY OF MERCED, STATE OF CALIFORNIA
11	PEOPLE OF THE STATE OF CALIFORNIA
12	Plaintiff) DISCOVERY IN FELONY CASES:
13	vs.) RECITALS, STIPULATION AND ORDER
14	CHARGED DEFENDANTS
15	
16	1. The parties to the below stipulation are: (1) as attorney for the prosecution, the
17	District Attorney of the County of Merced, (2) as attorneys for individual criminal
18	defendants, the Public Defender of the County of Merced, Deborah Bennett, David Capron,
19	William A. Davis, Dominic Falasco, Marc Garcia, Vangi Garza, C. Logan McKechnie,
20	Casey Oliver, Thomas Pfeiff, and Russell Whiting.
21	2. The below stipulation shall apply to any felony case filed in the Superior Court of
22	the County of Merced following the issuance of a holding order pursuant to the provisions
23	of California Penal Code section 872 in which the above parties are attorneys of record for
24	the prosecution and defense, respectively.
25	3. It is the intention of the parties that the below stipulation is supplemental to, and
26	not in place of, the informal discovery procedures provided by Section 1054.5 of the
27	California Penal Code.
28	4. It is the intention of the parties that nothing in the below stipulation abrogates

Appendix I (page 2 of 5)

1 recourse by any party in any case to any of the discovery procedures provided by Part 2, Title 5 of the California Penal Code, commencing at section 1054, or any other discovery remedy or procedure provided by law, 5. "Discovery" means the disclosure of materials and information as described by Part 2, Title 6 of the California Penal Code, commencing at section 1054. 6. The attorney for the prosecution may withdraw from the below stipulation at any time by providing written notice to the Presiding Judge of the Superior Court of the County of Merced and to each of the defense attorneys named in paragraph 1 above.

7. Any defense attorney may withdraw from the below stipulation at any time by providing written notice to the Presiding Judge of the Superior Court of the County of Merced and to the prosecuting attorney.

STIPULATION

It is stipulated by and between the parties hereto that at the time of arraignment for ples upon the Information, the court may enter an order in the minutes directing the parties to provide discovery to the opposing side in accordance with the following schedule:

a. By the prosecution to the defense: One week prior to the time of the pretrial readiness conference, which is customarily scheduled for seven to ten days prior to the date scheduled for trial

b. By the defense to the prosecution: At the time of the pretrial readiness conference, which is customarily scheduled for seven to ten days prior to the date scheduled for trial.

DOMINIC FALASCO

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Appendix I (page 3 of 5)

C. LOGAN NCKECHNIE
THOMAS PFEIFF

GORDON SPENCER DISTRICT ATTORNEY

By: Joseph Just dhe Assistant District Attorney

JUDGE OF THE SUPERIOR COURT

APRIL 4, 2000

NEW RULES ON DISCOVERY AS ANNOUNCED BY JUDGE CORNELL:

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THE COURT: I want to announce that we have now arrived at a stipulated discovery order and this will be at Maria's desk for all the defense attorneys to see. It is essentially something that's been worked out with Mr. Eisenhart and Mr. Tresidder and I want to thank Mr. Eisenhart for his work on this

What we will do is after there's a holding order, there will be a standing discovery order in statutory form for both sides, and it will be self-executing in that the prosecution will have to provide its discovery one week prior to the time of the Readiness Conference and the defense will have to provide it at the time of the readiness conference, so we can do away with having to file all these motions.

What will happen is at the time of the initial arraignment, once this is all signed and in effect, then the judge who handles the arraignment will make a notation that will go on the Minute Order that the standing discovery order is in effect, and if you get a stipulation after a prelim that the complaint will be the information, make sure to ask the judge to put on the order that the standing discovery order is in effect. Then if the discovery order is not complied with, you don't file a motion for a discovery order; you file a motion to compel compliance because you already have a discovery order.

It is likely we will run into bumps in the road on this thing but we'll try to work them out. From what I understand from Mr. Tresidder, this is the first county in the state that's tried to do something like this, so we will try to do our best to make sure we can handle the bumps.

All the defense attorneys on contract, including those in juvenile court, have indicated their willingness to go along with this, including the public defender. Please stop by Maria's desk and sign it after you've read it. The original on this will be on file together with the transcript of what I'm telling you right now, so I'll ask a transcript be prepared and be attached to this and this will be on file so everyone will know where it is and what it contains. So go to the clerk's desk and sign it, and she'll let me know when it's all been signed, and we'll move it into effect.